IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

Nos. 5765 and 5800

IN THE MATTER OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION, DEBTOR.

CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE UNDER THE TRUST DEED RECORDED AS DOCUMENT NO. 10325493,

Appellant,

vs.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION,

Appellee.

Counsel for Appellant:	*Counsel for Appellee:*
MR. RICHARD H. HOLLEN,	MR. JOSEPH Z. WILLNER,
MR. GEORGE W. OTT,	MR. JOSEPH KARLIN,

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois on Fourteenth and Fifteenth day of January, in the year of our Lord, one thousand nine hundred and Thirty-six, being one of the days of the regular December Term of said Court, begun Monday, the Sixteenth day of December, and of our Independence the 160th year. Placita.

Present:

Honorable John P. Barnes.
William H. McDonnell, U. S. Marshal.
Henry W. Freeman, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

In the Matter of
Forty-one Thirty-six Wilcox Building Corporation, a corporation,
Debtor. } No. 60278.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 13th day of June, 1935.

3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of
The Forty-one Thirty-six Wilcox Building Corporation, a corpn.,
Debtor. } No. 60278.

PETITION.

To the Honorable Judges of the United States District Court, for the Northern District of Illinois, Eastern Division:

The petition of Forty-one Thirty-six Wilcox Building Corporation, a corporation, hereinafter called Debtor, respectfully states that:

1. The debtor is a corporation organized and existing under the laws of the State of Illinois, and is a business or commercial corporation, and not a municipal, railroad, insurance or banking corporation, or a building and loan association, and is a corporation which could become bankrupt under Section 4 of "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" ap-

proved July 1, 1898, and acts amendatory thereto and supplementary thereto;

2. That the debtor has had its principal place of business and its principal assets at 4136 West Wilcox Street in the County of Cook, City of Chicago, and State of Illinois, in the Northern District of Illinois, during the six months preceding the date of the filing of this petition.

3. That the Debtor is a corporation engaged in the business of owning, leasing, operating, controlling and managing one (1) building and the site whereon said building is situated.

4. That the debtor owns in fee the land and apartment hotel building known as the Wilcox Apartments, located at 4136 West Wilcox Street, in Chicago, Illinois, which is a three-story corridor type apartment hotel building, containing thirty-five apartments, together with furniture and fixtures and equipment therein contained, said parcel of real estate being more specifically described as follows:

Lots 34 and 35, in Block 3 in W. M. Derby's Subdivision of the North East Quarter of the North East Quarter of Section 15, Township 39 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

5. That said property was conveyed to the Madison & Kedzie State Bank for the purpose of securing an indebtedness of $95,000.00 by trust deed, which trust deed was recorded in the office of the recorder of deeds as Document No. 10325493;

6. That said indebtedness was evidenced by 190 bonds in the principal amount of $500.00 each, executed as of the 20th day of March, 1929, and to mature in the following manner:

Bonds Nos. 1 to 3 incl. due and payable September 20, 1930;

Bonds Nos. 4 to 7 incl. due and payable March 20, 1931;

Bonds Nos. 8 to 11 incl. due and payable September 20, 1931;

Bonds Nos. 12 to 15 incl. due and payable March 20, 1932;

Bonds Nos. 16 to 19 incl. due and payable September 20, 1932;

Bonds Nos. 20 to 23 inclusive due and payable March 20, 1933;

Bonds Nos. 24 to 28 incl. due and payable September 20, 1933;

Bonds Nos. 29 to 32 incl. due and payable March 20, 1934;

Bonds Nos. 33 to 37 incl. due and payable September 20, 1934;

Bonds Nos. 38 to 41 incl. due and payable March 20, 1935;

Bonds Nos. 42 to 46 incl. due and payable September 20, 1935;

Bonds Nos. 47 to 190 incl. due and payable March 20, 1936.

7. That thereafter said property was conveyed to the Chicago Title & Trust Company to further secure a junior mortgage indebtedness in the sum of $15,000.00, dated as of December 26, 1929 and recorded on July 4, 1930 in the office of the Recorder of Deeds as Document No. 10565961 in Book 27469, Page 380; that said mortgage was given to secure payment of thirty-six (36) notes, notes numbered 1 to 35 inclusive each in the sum of $200.00, and note No. 36 in the sum of $8,000.00, payable to the order of bearer; said notes being payable on or before the 10th day of each month, commencing with February 10, 1930, with interest at the rate of six per cent per annum.

8. That on November 10, 1931, M. M. Hein filed a bill in the Superior Court of Cook County, entitled M. M. Hein *vs.* Forty-One Thirty-Six Wilcox Building Corporation, *et al,* Superior Court No. 546629, wherein it was sought to foreclose the junior mortgage hereinabove described as Document No. 10565961, which bill is still pending and undisposed of.

9. That the Metropolitan Trust Co. was appointed receiver under and by virtue of said Bill, to take possession of all of the assets of the debtor, and that said receiver is still in full possession, control and charge of all of the 6 assets of the debtor;

10. That thereafter a bill was filed in the Circuit Court of Cook County, entitled Madison & Kedzie State Bank *vs.* Max Gurevitz and others, Circuit Court No. B231251, to foreclose the indebtedness of the first mortgage hereinabove described as document No. 10325493, which Bill is still pending and undisposed of.

11. Your Petitioner represents that the capital stock of debtor, issued, and outstanding is 50 shares of common stock of a par value of $100.00.

Petitioner's Financial Condition is as Follows:

A. The petitioner is indebted to divers and sundry claimants including divers and sundry persons holding bonds secured by trust deed hereinabove described as document No. 10325493 in the total amount of $95,000.00, plus interest

thereon at the rate of six per cent per annum, until maturity of said bonds, and seven per cent per annum thereafter.

B. Petitioner is indebted to divers and sundry persons holding the notes hereinabove described and secured by the junior mortgage trust deed known and recorded as document No. 10565961, in the principal sum of $15,000.00, together with interest thereon at the rate of six per cent per annum.

C. All costs incurred in the foreclosure proceedings hereinabove set forth.

12. That petitioner requires relief under Section 77B of the Bankruptcy Act by reason of the fact that if the property was sold under and by virtue of the foreclosure
7 proceeding now pending, it would bring but a small part of its actual value, to the great loss and detriment of the owners and holders of all of the bonds and notes secured by property of your petitioner, and to the great loss and detriment of your petitioner, and that a proceeding for reorganization of debtor under section 77B of the Bankruptcy Act would be for the benefit of all creditors and all other parties interested in the assets of your petitioner, and could be carried out more economically and expeditiously.

13. That petitioner is unable to meet its debts as they mature and that it desires to effect a plan of reorganization pursuant to Section 77B of the Bankruptcy Act.

Wherefore your petitioner prays that an order may be entered approving this petition as properly filed under said section 77B and that it may be granted all other and further relief to which it may be entitled.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

By: FAY FISCHEL,
President.

United States of America,
State of Illinois,
County of Cook. } ss.

I, FAY FISCHEL, being duly sworn, depose and say that I am the president of the Forty-One Thirty-Six Wilcox Building Corporation, and the person who executed the petition for and on behalf of said corporation; that I have read the foregoing Petition and know the contents thereof; that the same is true to my own knowledge, except as to the mat-

ters therein stated on information and belief, and that as to those matters I believe them to be true; also that said petition is filed in good faith.

FAY FISCHEL.

Subscribed and sworn to before me this 8th day of June, A. D. 1935.

JOSEPH KARLIN,
Notary Public.

(Seal)

June 21, 5. 8 And on, to wit, the 21st day of June, 1935, came the Debtor by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit:

9 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

NOTICE.

To: Winston Strawn & Shaw, 38 S. Dearborn Street
A. E. Peterson, 38 S. Dearborn Street
Schulman Schulman & Abrams, 134 N. LaSalle St.
Sims Stransky & Brewer, 231 S. LaSalle Street
Sabath Perlman Goodman & Rien, 10 South LaSalle St.
Munro & Perkin, 134 S. LaSalle St.
Edwin A. Halligan, 111 W. Washington Street,
John A. Blake 105 W. Madison Street
Walter Fackler 33 N. LaSalle St.
Myron D. Alexander, 69 W. Washington St.
Edelson Edelson & Wise, 100 N. LaSalle St.
Chicago Title & Trust Co. as Successor-Trustee, 69 W. Washington Street.

You and Each of You are hereby notified, that on Friday, the 21st day of June, A. D. 1935, at the opening of court in the forenoon, or as soon thereafter as counsel may be heard we shall appear before His Honor Philip L. Sullivan in the room usually occupied by him as a courtroom in the Federal Building in the City of Chicago, or in his absence before such judge who may be sitting in his place and stead, and shall then and there move the court for an order approving the petition of the Forty-One Thirty-Six Wilcox Building Corporation, heretofore filed, as having been properly filed, and shall further move the court for a restraining order in

accordance with the petition heretofore filed, and further ask that the Court appoint the debtor to take possession of the property herein involved, to manage and operate the same, subject to the order of this Court until the consummation of the plan of reorganization of said property, in accordance with petition hereto attached;

At which time and place you may appear if you so see fit.

KARLIN AND COHEN,
833—11 S. LaSalle Street,
Attorneys for Debtor.

10 And on, to wit, the 21st day of June, 1935, came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed June 1935.

11 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

PETITION.

Your petitioner, Forty-One Thirty-Six Wilcox Building Corporation, a corporation, by Fay Fischel, its president, represents that it filed its petition for the reorganization of its property under Section 77B of the Bankruptcy Act; that the property herein involved is being operated and managed by the Metropolitan Trust Company, a corporation, as receiver, under and by virtue of the order of the Superior Court of Cook County, Superior Court No. 546629; that said property is improved with a three-story English basement corridor type hotel, consisting of thirty-five apartments, as more fully shown in petition of the debtor heretofore filed; that the operation of said property could be managed more economically and expeditiously by the debtor; that considerable expense would be saved in fees and other charges, that such savings would inure to the benefit of all the creditors and stockholders of the debtor.

Your petitioner further represents that there are divers suits pending in the Circuit and Superior Court of Cook County, State of Illinois, foreclosing trust deeds on said property; that if the attorneys prosecuting said suits were permitted to continue in the prosecution of same that great

waste would be committed and expenses incurred, that
12 would result to the great loss and detriment to all of the parties claiming an interest in the premises herein involved.

Wherefore this petitioner prays that this Honorable Court may take jurisdiction over debtor's property, and that an order may be entered, directing the Metropolitan Trust Co. to turn said property over to your petitioner, together with any cash and other property of the debtor that it may have on hand, for the purpose of managing and supervising said property until a plan of reorganization can be effected, and that Your Honor may issue an order restraining and enjoining the Chicago Title & Trust Company, as successor, trustee, its attorneys, servants and employees from proceeding further with the foreclosure proceeding in the Circuit Court of Cook County, entitled, Chicago Title & Trust Company *vs.* Max Gurevitz, Circuit Court Case No. B231251, together with all other parties and attorneys involved in said proceeding, and that this court may enjoin and restrain M. M. Hein, his servants, agents and attorneys, from further proceeding in the Superior Court of Cook County in the case entitled M. M. Hein *vs.* Forty-One Thirty-Six Wilcox Building Corporation, Superior Court case No. 546629, together with all attorneys and parties of record, in said proceeding, and for such other and further and different relief as this Court may deem meet and proper.

FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION,

By: FAY FISCHEL,
President.

State of Illinois, }
County of Cook. } ss.

FAY FISCHEL, being on oath first duly sworn, deposes and says that she is the president and duly authorized agent of the petitioner in this behalf, that she has read and knows the contents of the foregoing petition subscribed by her and that the same is true.

FAY FISCHEL.

Subscribed and sworn to before me this 19th day of June, 1935.

LESTER COHEN,
Notary Public.

13 And afterwards, to wit, on the 21st day of June, 1935, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered J 21, 193

14 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Friday, June 21, 1935.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion of solicitors for the debtor

It Is Ordered that leave be and the same is hereby given the debtor to file a Petition under Section 77B of the Bankruptcy Act and

It Is Ordered that all parties in interest be and they are hereby required to answer said Petition within seven (7) days from this date and

It Is Further Ordered that the said petition and answer and the petition for a Restraining Order be and they are hereby referred to Special Master, Charles A. McDonald to report his recommendations to this Court.

15 And on, to wit, the 27th day of June, 1935, came the Respondent by its attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit: Filed Jun 1935.

16 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ANSWER OF CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE, UNDER THE TRUST DEED RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 10325493, TO THE PETITION OF FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION, A CORPORATION, FILED HEREIN ON JUNE 13, 1935, AND TO THE PETITION OF SAID FORTY-ONE THIRTY-SIX WILCOX BUILDING CORPORATION FILED HEREIN ON JUNE 21, 1935,

Chicago Title and Trust Company, a corporation, as suc-

cessor Trustee under the Trust Deed made by Max Gurevitz, a bachelor, to Madison & Kedzie State Bank, a corporation, dated March 20, 1929 and recorded in the office of the Recorder of Deeds of Cook County, Illinois on April 1, 1929 in Book 26737 of Records, at page 85, as Document No. 10325493, in answer to the petition of Forty-one Thirty-six Wilcox Building Corporation, a corporation, for reorganization under Section 77B of the Bankruptcy Act, as amended, filed herein on June 13, 1935, and to the petition of said Forty-one Thirty-six Wilcox Building Corporation for the entry of an order directing the Metropolitan Trust Company to turn over to said Forty-one Thirty-six Wilcox Building Corporation certain premises commonly known as 4136 Wilcox Street, Chicago, Illinois, together with any cash and other property of said Forty-one Thirty-six Wilcox Building Corporation, and restraining this respondent, its attorneys, servants and employees, from proceeding with the foreclosure of the lien of said Trust Deed recorded as Document No. 10325493, and asking for other relief, says:

(1) On or about October 24, 1931 Madison & Kedzie State Bank, as Trustee under said Trust Deed recorded as Document No. 10325493, filed its Bill of Complaint in the Superior Court of Cook County, Illinois against Max Gurevitz and others for the foreclosure of the lien of said Trust Deed, and thereafter such proceedings were had therein that this respondent, as successor Trustee under the terms and provisions of said Trust Deed, was substituted as complainant therein, and on or about the 28th day of September, 1933 a reference was had to Henry L. Burman, one of the Masters in Chancery of said Superior Court, who took testimony and heard evidence, and made his report on April 25, 1935, no objections having been filed thereto, and said report was approved by said Superior Court on May 24, 1935, and a decree of foreclosure and sale entered therein on May 24, 1935 in conformity with said report.

(2) On or about May 10, 1935 one George Willens, by Myron D. Alexander, his solicitor, alleging that he was the owner and holder of certain bonds secured by said Trust Deed, obtained the entry of an order in said Cause No. 547687 in said Superior Court granting leave to said George Willens to file his appearance and an answer therein within ten days from the date thereof. Said George Willens thereupon filed therein his appearance, but did not within ten days, or at any

time thereafter, file an answer to the bill of complaint, as
18 amended and supplemented, theretofore filed therein.

This respondent is advised by its solicitors representing this respondent in said proceeding in said Superior Court that through inadvertence notice of the entry of said decree entered on May 24, 1935 was not served upon said George Willens; but thereafter a copy of said decree was served upon his said solicitor, who several weeks thereafter presented to said Superior Court a petition asking the vacation of said decree because notice thereof had not been served upon him, and obtained the entry of an order therein vacating said decree and permitting certain objections attached to said petition to be heard by said Henry L. Burman, Master in Chancery of said Court, which objections are in words and figures as follows:

"Now comes George Willens, party litigant herein, and hereby objects to the report of the Master herein for the following reasons:

"1. For that the Master has erroneously found that the complainant is the successor-trustee herein, in that said finding is not supported by the record and is contrary to law.

"2. For that the Master has erroneously found that the bondholders committee referred to in said Master's Report has the full legal and equitable title in and to the bonds and interest coupons deposited with it, in that said finding is not supported by the record and is contrary to law.

"3. For that the Master has erroneously found that the complainant, as successor-trustee herein, has rendered considerable services in the conduct of these proceedings and that it is entitled to recover the reasonable fee for services so rendered and to be rendered by it and that the sum of One Thousand Seventy-Five Dollars ($1,075.00) is the fair, usual and reasonable fee for such services and that said sum is allowed to the complainant as successor-trustee as an additional indebtedness under said trust deed and entitled to priority as therein found, in that said finding is not supported by the record and is contrary to law, and said fee is grossly excessive and moreover, due to the fact that the record does not support the finding, that the complainant, is the valid successor-trustee, no fees should have been allowed to it whatsoever.

19 "4. For that the Master has erroneously found that the complainant, as successor-trustee, is entitled to recover the solicitor's fees for its solicitors, and that said so-

licitors rendered services herein for which the sum of Three Thousand Seven Hundred Fify Five Dollars ($3,755.00) is a fair, reasonable and usual fee therefor, in that the said finding is not supported by the record and is contrary to the law, and moreover, the said fee is excessive and unreasonable, and due to the fact that the complainant has a law department, it had no right to hire independent counsel as its solicitors herein and charge for their services herein.

"5. For that the Master has erroneously found that the complainant was compelled to expend the sums of Fifty Seven Dollars ($57.00), Two Hundred Twenty Two Dollars ($222.00) and Ten Dollars ($10.00), respectively, for foreclosure minutes herein, and that it is entitled to a lien against the premises prior to the lien of the indebtedness secured by bonds and interest coupons herein, in that said finding is not supported by the record and is contrary to law; moreover, the complainant has issued said minutes of foreclosure and seeks to obtain additional compensation therefor in addition to its services as trustee herein, contrary to law.

"6. For that the Master has erroneously found that the complainant is entitled to the sum of One Hundred Dollars ($100.00) for estimated further foreclosure minutes herein, in that said finding is not supported by the evidence and is contrary to law; moreover, the said complainant is not entitled by law to charge therefor, due to the fact that it is the one who issues such minutes.

"7. For that the Master has erroneously found that the trustee, during its holding possession of the property described in the trust deed herein, collected the rents, issues and profits therefrom, which amounted to the sum of Twelve Thousand Six Hundred Thirteen Dollars and 43/100 ($12,613.43), out of which sum the trustee disbursed the sum of Nine Thousand Eight Hundred Ninety Eight Dollars and 72/100 ($9,898.72), in that said finding is not supported by the evidence and is contrary to law.

"8. For that the Master has erroneously found that the trustee credited the sum of Two Thousand Two Hundred Eighty Three Dollars and 69/100 ($2,283.69) against the mortgage indebtedness herein, in that said finding is not supported by the record and is contrary to law.

"9. For that for divers other reasons, the said Report of said Master is erroneous and contrary to law.

"Wherefore, this objector respectfully prays that the said

report be altered, varied, amended or modified in
20 accordance with the foregoing objections.

GEORGE WILLENS
by MYRON D. ALEXANDER
his attorney."

(3) This respondent believes, and therefore charges the fact to be, that said objections are frivolous and without merit, and that the purpose of the proceedings taken by said George Willens in said Cause No. 547687 in said Superior Court was to hinder and delay the prosecution of said foreclosure proceeding, and to strengthen the position (if any) of said Forty-one Thirty-six Wilcox Building Corporation in any petition which it might thereafter file in this Court under Section 77B of the Bankruptcy Act, as amended, and which it was then contemplated would be filed, although neither the Court nor this respondent was advised of such intended action.

(4) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, is a corporation existing under and by virtue of the laws of the State of Illinois, but states the fact to be that said corporation was dissolved in 1931.

(5) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, has had its principal place of business at 4136 Wilcox Street, Chicago, Illinois, or at any other place, during six months preceding the date of the filing of its petition herein, but states the fact to be that said Forty-one Thirty-six Wilcox Building Corporation was dissolved in 1931 and was not then conducting, nor did it at any time thereafter conduct, any business at 4136 Wilcox Street, Chicago, Illinois, or at any other place, and that since 1931 it has had no principal place of business and has not conducted any business, and is not now en-
21 gaged in the business of owning, leasing, operating, controlling and managing the premises situated at 4136 Wilcox Street, Chicago, Illinois.

(6) This respondent denies that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, is the owner in fee of the premises described in the petition filed herein on June 13, 1935, but states the fact to be that heretofore H. F. Newstedt Heating Company, a corporation, filed its bill of complaint in the Circuit Court of Cook County, Illinois, in Cause No. B-207163 in said Court, against said Forty-one Thirty-six Wilcox Building Corporation and others

for the foreclosure of a mechanic's lien, and thereafter Morton Manufacturing Company, a corporation, filed therein its answer in the nature of an intervening petition for the foreclosure of a mechanic's lien, and that such proceedings were had therein; that a decree of foreclosure and sale was entered therein, and pursuant thereto said premises sold and a certificate of sale was issued to said H. F. Newstedt Heating Company and said Morton Manufacturing Company, and a duplicate thereof dated August 5, 1931 was recorded in the office of the Recorder of Deeds of Cook County, Illinois on August 10, 1931, in Book 29414 of Records, at page 508, as Document No. 10951481; that said Forty-one Thirty-six Wilcox Building Corporation, a corporation, did not redeem said premises from said sale, nor were said premises redeemed from said sale by any other person or persons; and that the right of all persons to redeem from said sale has expired.

(7) This respondent admits that on or about November 10, 1931 one M. M. Hein filed his bill of complaint against said Forty-one Thirty-six Wilcox Building Corporation and others in the Superior Court of Cook County, Illinois, in
22 Cause No. 546629 in said Court, for the foreclosure of a certain Trust Deed recorded in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 10565961, and thereafter, on or about December 2, 1931, an order was entered therein extending the receivership of the Receiver theretofore appointed therein to said Cause No. 547687 for the benefit of this respondent, but this respondent has no information upon which it can form a belief concerning the other allegations with respect to said Trust Deed recorded as Document No. 10565961 and the note or notes or other indebtedness secured thereby, and therefore neither admits nor denies the same but demands strict proof thereof.

(8) This respondent is advised, and therefore states the fact to be, that said Forty-one Thirty-six Wilcox Building Corporation, the alleged debtor herein, did not assume or agree to pay the indebtedness secured by said Trust Deed recorded as Document No. 10325493; and further denies that said Forty-one Thirty-six Wilcox Building Corporation was or is obligated to pay said indebtedness.

(9) This respondent says that Henry L. Burman, said Master in Chancery to whom said Cause No. 547687 was referred, has found that there is due to this respondent, as successor Trustee, for its own use and benefit, the following items:

Successor-Trustee's fees	$1,075.00
Solicitors' fees	3,755.00
Stenographer's fees	30.80
Audit of the Accounts of Trust paid April 6th, A. D. 1932	85.00
Interest on said sum of $85.00 at 7% per annum from 4/6/32 to 4/25/35, date of Master's Report	18.16
Minutes of Foreclosure	57.00
Recording Resignation of Trustee and Acceptance of Successor-Trustee	2.15
23 Further Minutes of Foreclosure	222.00
Notice of Publication	24.00
Further Minutes of Foreclosure	10.00
Further Minutes of Foreclosure	100.00
Total	$5,379.11

and that this respondent, as successor Trustee, for its own use and benefit, has a first, prior and paramount lien upon the premises involved therein, and the rents, issues and profits thereof, for said sum of $5379.11 and all other costs and expenses of said proceeding, and further found that there was due to this respondent, for the equal and pro rata benefit of the holders and owners of outstanding bonds and interest coupons secured by said Trust Deed recorded as Document No. 10325493, the following amounts:

Balance due on interest coupons of Series 4 appertaining to bonds 4 to 190, both inclusive, except bonds 38 to 45, both inclusive, and bonds 51, 52, 54, 55, 56 and 78	$ 2,577.42
Interest on said sum of $2,577.42 at the rate of 7% per annum from 3/20/31, date of maturity, to 4/25/35, date of Master's Report.	739.24
Due on bonds 4 to 7, both inclusive	2,000.00
Interest on said sum of $2,000.00 at the rate of 7% per annum from 2/20/31, date of maturity, to 4/25/35, date of Master's Report.	573.61
Due on interest coupons of Series 5 appertaining to bonds 8 to 190, both inclusive	2,745.00
Interest on said sum of $2,745.00 at the rate of 7% per annum from 9/20/31, date of maturity, to 4/25/35, date of Master's Report.	691.20
Due on bonds 8 to 11, both inclusive	2,000.00

Interest on said sum of $2,000.00 at the rate of 7% per annum from 9/20/31, date of maturity, to 4/25/35, date of Master's Report.	503.61
Due on bonds 12 to 190, both inclusive, due by reason of acceleration	89,500.00
Interest on said sum of $89,500.00 at the rate of 6% per annum from 9/20/31, to 11/27/31, date of acceleration (filing of bill to foreclosure)	999.44
Interest on said sum of $89,500.00 at the rate of 7% per annum from 11/27/31, date of acceleration (filing of bill to foreclose) to 4/25/35, date of Master's Report	21,370.55
Total	$123,700.07

(10) This respondent is informed and believes, and therefore states the fact to be, that said premises, together with all improvements thereon, free and clear of all encumbrances, has a present fair cash market value of not to exceed $46,000.

(11) This respondent denies that said petition filed herein by said Forty-one Thirty-six Wilcox Building Corporation, debtor herein, was filed in good faith or properly filed.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor Trustee,
by WINSTON, STRAWN & SHAW
Its Attorneys.

State of Illinois, }
County of Cook. } ss.

GEORGE W. OTT, being first duly sworn, on oath deposes and says that he is associated with the law firm of Winston, Strawn & Shaw, attorneys for the respondent Chicago Title and Trust Company, a corporation, as successor Trustee, and is duly authorized to make this affidavit on its behalf.

Affiant further says that he has read the above and foregoing answer and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters and things therein stated to be made upon information and belief, and as to those matters and things he believes it to be true.

GEORGE W. OTT

Subscribed and sworn to before me this 27 day of June, 1935.

HELEN C. EGAN
Notary Public.

(Seal)

79 And on, to wit, the 26th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Statement of Evidence in words and figures following, to wit: Statement o Evidence Feb. 26, 1

79½ IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

STATEMENT OF EVIDENCE UNDER EQUITY RULE 75.

Be it remembered that the above entitled cause came on for hearing before the court sitting in bankruptcy on the 13th day of February, 1936, upon the issues formed by the petition of Forty-one Thirty-six Wilcox Building Corporation for corporate reorganization filed June 13, 1935, upon the petition of Forty-one Thirty-six Wilcox Building Corporation filed June 21, 1935, upon the answer of the Chicago Title and Trust Company, as successor trustee, to said petitions, upon the report of Charles A. McDonald, special master of this court to whom said cause had been referred, and upon the exceptions of the Chicago Title and Trust Company, as successor trustee, to the report of said Charles A. McDonald, as special master.

And Karlin & Cohen and Joseph Z. Willner appeared
80 for Forty-one Thirty-six Wilcox Building Corporation, and Winston, Strawn & Shaw appeared for the Chicago Title and Trust Company, as successor trustee.

And the testimony of the several witnesses taken before said Charles A. McDonald, special master of this court, and reported by him to the court, and the exhibits produced before said special master, were read and considered by the court, which testimony and which exhibits were as follows, to-wit:

FAY FISCHEL, called as a witness on behalf of Forty-one Thirty-six Wilcox Building Corporation, having been duly sworn, testified, on direct examination, as follows:

Direct Examination by Mr. Karlin.

Q. State your name, please.
A. Mrs. Fay Fischel.
Q. And where do you live, Mrs. Fischel?
A. 5820 North Kenmore Avenue, Chicago, Illinois.

Q. And you are the president of the Forty-one Thirty-six Wilcox Building Corporation?

A. Yes.

Q. Is that an Illinois corporation organized in the State of Illinois?

A. Yes.

Q. At the time this corporation was organized, do you know what the capitalization of it was, how many shares of stock did it have?

A. 500.

Q. And do you know what kind of stock that was? Was it common stock?

A. Yes.

Q. Common stock of a no par value, is that right?

A. Yes, sir.

Q. Now who owns this common stock, right now?

81 A. Right now, I have 498 shares. My father, Mr. Hyman Schulman, has one share, and Mr. Sam Schulman has the other.

Q. And are those all the stockholders of the corporation at the present time?

A. Yes, that is all.

Q. Who are the directors of the corporation, the same people that are the stockholders?

A. Yes. Mr. Schulman takes care of most of the—

Q. Now, were you authorized by the stockholders of this corporation to file a petition under the Bankruptcy Act, Section 77-B, for the reorganization of this property?

A. Yes, sir.

Q. And in accordance with that authorization, did you cause a petition to be filed?

A. Yes, I was advised by my father, Mr. Hyman Schulman—

Q. To file a petition?

A. —to file a petition.

Q. And what was the purpose of the filing of this petition?

A. Well, we thought, in other words, that we could reorganize our corporation.

Q. And was the corporation indebted at the time, and to whom?

A. What do you mean?

Q. Did you have an indebtedness that you wanted to reorganize?

A. Yes.

Q. What was the indebtedness?
A. Well, between 30 and 35 thousand.
Q. No. I am talking about the bond issue.
A. Pardon me.
Q. Was there a bond issue?
A. Yes.
Q. What was the amount of the bond issue?
A. There were bondholders and we figured that we could—we feel we can take care of them and better ourselves and
82 the bondholders.
Q. What was the amount of the bonded indebtedness?
A. Of our indebtedness you mean?
Q. The bonds, yes, what was the amount of the bonds?
A. Between 30 and 35.
Q. The amount of the bond issue, what was the amount, how much of a bond issue, how much of a mortgage?
A. I don't know the exact amount of the mortgage.
Q. Would it refresh your memory, if I told you it was $95,000., is that correct?
A. About that.
Q. About $95,000.?
A. About $95,000.
Q. And when the corporation acquired this property, did they agree to assume that obligation?
A. Yes.
Q. And this corporation has done all of its business in the State of Illinois, has it?
A. Yes.
Q. And it has been in the State of Illinois as a corporation for the last six months prior to the filing of this petition in bankruptcy.
A. Yes.
Q. Now, how much of an investment have the stockholders in this company, how much money does the 500 shares of stock represent as an investment in the company?
A. That, I think, would be between 30 and 35 thousand dollars.
Q. That was put into the company?
A. Put in besides the mortgages.
Q. Besides the mortgage, for the purpose of completing the improvements on the land?
A. Yes, sir.
Q. And buying the land?

A. Yes. I would not say exactly thirty. It may be between 30 and 35.

Q. And what type of a building is this?

A. It is a three and a half story building, with one,
83 two and three room apartments, with carpeted floors.

Q. Are all the floors carpeted?

A. Yes.

Q. How about the apartments?

A. The apartments are carpeted, also.

Q. And where is it located? Is it at 4136 Wilcox Street, Chicago, Illinois?

A. Yes.

Q. That is where the corporation derives its name from, isn't it?

A. Yes.

Q. Now, there is a mechanic's lien claim, the foreclosure of a mechanic's lien claim that has been filed; has that been straightened out, to your knowledge?

A. Not that I know of. I don't know, Mr. Karlin.

Q. You are not familiar with it?

A. No, I am not.

Q. Who would be more familiar with it?

A. Well, my brother, Mr. Sam Schulman would take care of most of this, and he would know about it.

Q. Did he ever tell you whether it was straightened out or not?

A. Well, I don't know. I just leave those things go to him and if I am in doubt, I know that he would take care of it, all right.

Q. The corporation has never been sold or transferred its title to this piece of property, to anyone, has it?

A. No, it has not.

Q. It is still the owner of the title to this piece of property?

A. Yes.

Q. Subject to whatever foreclosure proceedings are pending against it?

A. Yes, sir.

Q. Did you ever know a Mr. Willens?

A. No, I don't.

Q. Did you ever intend to file this petition in the bank-
84 ruptcy court for the purpose of delaying or impeding the foreclosure proceeding in the State court and for no other purpose?

A. I don't understand what you mean, Mr. Karlin?

Q. Well, did you ever in the filing of this petition in the bankruptcy court file it only for the purpose of delaying and impeding the foreclosure case in the State court and for no other purpose?

A. No, sir.

Q. Your purpose was to attempt a reorganization?

A. Yes, sir.

Q. Of the financial structure of this property?

A. Yes, sir.

Mr. Karlin: That is about all, Master, except as to the value of the property, if you want me to bring in an expert.

We have here an account of the operation of this property by the Metropolitan Trust Company as a receiver. I wonder if we can offer that as evidence of the income and the cost of operation and the amount of taxes that are paid?

The Master: If you wish.

Mr. Karlin: All right.

Reading from this account of the Metropolitan Trust Company filed in the Superior Court of Cook County, Illinois, under case of M. M. Hein *vs.* Forty-one Thirty-six Wilcox Building Corporation, General Number 546629, the receiver shows that the general taxes for the property located at 4136 Wilcox Avenue, Chicago, Illinois, have been paid for the years 1929, 1930, 1931 and 1933, and that 75 per cent of the taxes for the year 1932 have been paid; that it has on hand, after paying all of its operating costs and expenses and taxes
85 $889.41, which is up to and including June 24, 1935; that from the period of February 11, 1935, to June 24, 1935, there has been a gross income from the operation of this property in an amount of $3,886.15; that the total expenses for that period are $3,574.74; that included in the disbursements for that period is an item of $250. to the Metropolitan Trust Company as receiver's fees and $200. to John A. Blake as solicitor's fees, $301.99 to Robert M. Sweitzer as County Collector for taxes, and another item of $186.22 to Robert M. Sweitzer as County Collector for taxes.

I don't think we should offer the whole thing. It would just encumber the file.

The Master: All right.

Mr. Karlin: Unless your Honor feels that it is advisable. There are about ten pages here.

The Master: You might offer it as an exhibit.

Mr. Karlin: All right.

The Master: With leave to withdraw it.

Mr. Karlin: Yes. All right, I will offer it as PETITIONER'S EXHIBIT NO. 1.

The Master: It may be admitted and marked Petitioner's Exhibit No. 1.

(Said document was thereupon offered and received in evidence as DEBTOR'S EXHIBIT 1. Not included in this statement.)

Richard H. Hollen and George W. Ott, of the law firm of Winston, Strawn & Shaw, here appeared, and it was agreed that an opportunity should be afforded them to cross-examine Mrs. Fischel, and to strike out all incompetent testimony.

Mr. Karlin: May the record show that the corporation's capitalization is 50 shares of stock, $100.00 par value,
86 in lieu of the original statement, which said that the capitalization was 500 shares of capital stock. That is all.

The Master: Very well.

(RESPONDENT'S EXHIBIT 1 was offered and received in evidence subject to the objections that it was immaterial to the issues involved.)

(RESPONDENT'S EXHIBIT 2 was then offered and received in evidence, subject to the objection that it was immaterial to the issues involved.)

(RESPONDENT'S EXHIBIT 3 was then offered and received in evidence subject to the objection that it was immaterial and not relevant to the issues in the case, on the ground that the decree itself does not deprive the corporation of the title to the property, but is merely evidence of another indebtedness which the corporation may have and has no bearing on the question of whether the corporation any longer has title to the property.)

(RESPONDENT'S EXHIBIT 4 was then offered and received in evidence subject to the objection that it was immaterial and not relevant to the issues in the case, on the ground that the decree itself does not deprive the corporation of the title to the property, but is merely evidence of another indebtedness which the corporation may have and has no bearing on the question of whether the corporation any longer has title to the property.)

(RESPONDENT'S EXHIBIT 5 was then offered and received in evidence subject to objection.)

87 FAY FISCHEL, on cross-examination testified as follows:

Cross-Examination by Mr. Ott.

Q. Will you state your name, please, Mrs. Fischel?
A. Mrs. Fay Fischel.
Q. Are you the same Mrs. Fischel that testified in this proceeding earlier?
A. Yes.
Q. You stated that you were president of the 4136 Wilcox Building Corporation?
A. Yes.
Q. When did you become president of that corporation?
A. In the early part of May, 1935.
Q. Had you any connection with the 4136 Wilcox Building Corporation prior to that time?
A. Well, I am not sure about whether I was elected—whether there was a meeting in 1932 on that. I am not sure about that, not quite sure. I am pretty sure of May 10th, about that time, in 1935.
Q. Do you own any shares of the 4136 Wilcox Building Corporation?
A. Do I what?
Q. Own any of the shares?
A. Yes.
Q. When did you become the owner of any of the shares in that corporation?
A. In that same year, May, 1935.
Q. In May of 1935?
A. Yes, sir.
88 Q. Were you at any time a director of the 4136 Wilcox Building Corporation?
A. I have been elected president, is that what you mean?
Q. No. Have you been made a director of the corporation?
A. Well I don't know how to—you mean, before that time?
Q. Or since? Before or since?
A. I don't know, as a director. I know that I am considered president—
Mr. Karlin: Well she testified, didn't she, that she is a director now?
Mr. Ott: Well, I know, but I am cross-examining her.

The Witness: I know that I am elected president of this corporation, and if that means—

Q. By whom were you elected president?

A. Well, between—

Q. By whom, I say?

A. By whom?

Q. Yes.

A. When we had—between my brother and dad and I, I was given the—I was elected president by brother and dad.

Q. Was there a meeting called?

A. Yes, in that month of May, 1935.

Q. Was that a stockholders' meeting?

A. If I recall, there was just a sort of a get-together at home, and brother suggested that we join the corporation, and I was elected, I was given the presidency, and brother was vice-president, and dad has the other end of it.

Q. What do you mean by "the other end of it?"

89 A. Well, there is 50 shares in it, and I control 48, and brother has 1, and dad has the other.

Mr. Hollen: Q. Were there any minutes kept of that meeting?

(No response.)

Mr. Ott: Q. Did you pay anything for the shares?

A. Well, the exact amount of it I can't say, because—

Q. I say, did you pay anything for the shares?

A. Well, I will tell you how I—as a loan to my dad, he gave me the control of this stock.

Q. When did you make that loan to your dad?

A. Well, from time to time, I don't know exactly.

Q. And when did he give you the shares of stock as a loan?

A. At this—in 1935.

Q. Was that the first meeting that you had attended, having to do with the affairs of 4136 Wilcox Building Corporation?

A. Yes, that is the first one I attended to, yes.

Q. And what is your father's name?

A. Mr. Hyman Schulman.

Q. And who is your brother?

A. Sam Schulman.

Q. Do you know who the board of directors are?

A. The board of directors of the building?

Q. Yes.

A. Well, you mean in taking care of the—

Q. Managing the affairs of the corporation?

A. Well, my brother does most of the managing of the building.

Q. Do you know whether there is a board of directors?

A. I don't know.

90 Q. Do you know whether any proceedings were brought by the Attorney General of the State of Illinois to dissolve the 4136 Wilcox Building Corporation?

Mr. Karlin: I will object to that.

The Master: If she knows, she may answer.

A. Well, I don't know anything about that. I will tell you why—

The Master: If you don't know, it doesn't matter as to why.

The Witness: I just don't know.

Mr. Ott: Q. Do you know whether or not the property—what was the location of this property?

A. The address?

Q. Yes.

A. 4136 Wilcox.

Q. The property at 4136 Wilcox Avenue, Chicago, Illinois, has been sold pursuant to any decree of Court?

Mr. Karlin: Object.

The Master: She may answer if she knows.

A. I don't know whether it has been sold or not. I know one thing, it has been foreclosed.

Mr. Ott: Q. You don't know whether it has been sold under any decree?

A. No, I don't.

Q. And you don't know whether any redemption has been made from any sale pursuant to any decree?

A. No, I don't.

Q. I show you a certain petition which was filed in this proceeding on June 13, 1935, and ask you whether your signature appears on the last page thereof?

A. Yes, that is my signature.

91 Q. Did you read this petition before you signed it?

A. Well, I will tell you, in a case like that, my brother would bring things home to me and say, "Fay, we have done this or done that, and want your signature to it," and I let him run things, and if he says it is all right, it is all right with me.

Q. Well, did you read this over before you signed it?

A. I don't know if I did or not.

Q. Did you appear before Mr. Joseph J. Karlin and subscribe and swear to that before him?

A. Yes, sir. I wouldn't sign it, I guess, if I hadn't read it.

Q. But you appeared before him and subscribed to it?

A. Yes, sir.

Q. Now, the third paragraph of the petition states that the debtor "is a corporation engaged in the business of owning, leasing, operating, controlling and managing one building, and the site whereon the building is situated."

What business has the 4136 Wilcox Building Corporation conducted since May 10, 1935, which you state was your first connection with the corporation?

A. Well, I couldn't explain that all to you, I just couldn't.

Q. Does it lease this property?

A. Did you say, does it?

Q. Does it lease this property?

A. Does the building lease—

Mr. Karlin: I am going to object to this, if your Honor please.

92 A. I can't go into detail on every little thing. It is awfully hard for me to—

Mr. Karlin: I am objecting, just a minute, please. I object, on the ground that it isn't cross examination.

The Master: She may answer.

Mr. Karlin: I further object to it on the ground that it isn't material, as to what the company did in May, 1935.

The Master: She may answer.

Mr. Karlin: All right, go ahead.

Mr. Ott: Q. Do you know whether or not there is a receiver in possession of the property at 4136 Wilcox Avenue?

A. Well, I just know that the building is foreclosed, and has been foreclosed, and there is a receiver in now.

Q. You know that there is?

A. Yes.

Q. And is the receiver leasing the property? Do you know who is operating it?

A. Yes.

Q. Who is the receiver, do you know?

A. I don't know.

Q. Is the corporation making any leases, do you know, or has it made any leases to your knowledge since May of 1935?

A. Since May, 1935?

Q. Yes.
A. I don't know.
Q. Do you know whether it made any leases prior to that time?
A. Not within the last few years, while the building was foreclosed.
93 Q. Well, what business has the corporation been conducting in the last year, if you know?
A. What business has it?
Q. Yes.
A. Well, I don't know what you mean by that, what business—
Q. Well, is it operating an apartment building, is it selling dry goods, or what kind of business is it doing?
A. Not the corporation, right now?
Q. Yes.
A. Well, we haven't anything to do with the building right now.
Q. And do you have anything else, does the corporation do anything else?
Mr. Karlin: She has answered that. I object to that.
The Master: If she knows, she may answer.
A. I know that the building has been foreclosed, and we haven't been—
Mr. Ott: Q. Well, it isn't transacting a coal business or a dry goods business or any other kind of business that you know of, is it?
A. No.
Q. And do you know whether it did conduct any such business within six months prior to June 13, 1935?
Mr. Karlin: I object to that question on the ground that it says "conduct that business," not referring to any specific kind of business, except coal business and dry goods.
Mr. Ott: All right, I will withdraw the question.
Q. Do you know whether or not the 4136 Wilcox Building Corporation, prior to June 13, 1935, leased, operated or managed the building situated at 4136 West Wilcox Street, Chicago, Illinois?
94 A. Prior to May, 1935?
Q. Yes.
Mr. Karlin: I object to that question—
The Master: She may answer.
Mr. Karlin: Well, I would like to state the ground—on the ground that she has already answered that it hadn't.

The Master: Well, if she has answered it, there will be no harm in answering it again.

The Witness: A. Well, in that case, I have told you it has been foreclosed, and we haven't had anything to do with it within those few years.

Mr. Ott: All right.

The Master: Q. You mean by "we had nothing to do with it," you mean the corporation had nothing to do with it?

A. We weren't managing it—

Q. Not "we". The question is, did the corporation manage it?

A. The corporation—

Q. When?

A. During the time it was foreclosed, the corporation had nothing to do with the building.

Mr. Ott: Q. Do you know whether or not the corporation was organized under the laws of this State?

A. I think it was.

Q. Do you know whether it has been or not?

A. Well, I am sure—

Q. I say, do you know whether it has been or not?

A. Well, I am pretty sure. I won't say for sure, because I don't know much about the details, I will tell you, because—

Mr. Karlin: Q. Your belief is that it has been?

95 A. I believe it has, yes. I just can't express myself.

Mr. Ott: Q. Have you ever seen a charter of the corporation or articles of incorporation, or anything of that sort?

A. Yes.

Q. You stated on direct examination that you were authorized by the stockholders of the corporation to file a petition under section 77-B; is that right?

A. Yes, sir.

Q. And who authorized you to file that petition?

A. Who did?

Q. Yes, who were the stockholders that authorized this?

A. Who were the stockholders?

Q. Yes.

A. Of the corporation, you mean?

Q. Yes.

A. Well, dad and brother.

Q. Do you know whether the directors of the corporation authorized you to file the petition?

A. I don't know; I don't remember.

Q. Now, you stated on direct examination that the corporation had been in the State of Illinois as a corporation for the last six months prior to the filing of the petition. Do you recall that?

A. Pardon me, what was that question?

Mr. Ott: Will you read that question?

(Question read by Reporter).

A. Yes, sir.

Q. Would your answer have been the same if you had known that the corporation had been dissolved in 1931?

96 Mr. Karlin: Just a minute. I object to that on the ground that what the legal effect of the dissolution is in this case, she couldn't be asked to testify to. It isn't competent evidence.

The Master: Sustained.

Mr. Ott: Q. Well, how do you know that the corporation has been in existence under the laws of the State of Illinois during the last six months?

Mr. Karlin: I am going to object to that, if your Honor please.

The Master: She may state the basis of her answer.

A. How do I know?

Mr. Ott: Q. Yes.

A. Well, I know through dealing with my attorney, who takes care of all those matters. He has informed me, and we have been together on it, we have signed papers upon it, we know that the corporation has been since May 10th—I am pretty sure it was May 10th, 1935.

Q. The basis of your information is what your attorney has told you, is that right?

A. No, we have been there at his office, brother, dad and I, and read things over, and talked things over.

Q. That is the basis of your knowledge in answering that question, is that right?

A. Yes.

Q. Now, you stated on direct examination that the corporation was still the owner of the property at 4131 Wilcox Avenue—

Mr. Karlin: '36.

Mr. Ott: (Continuing) —4136 Wilcox Avenue, Chi-

97 cago, Illinois; is that right?

A. Yes, sir.

Q. Now, what is the basis of your knowledge that it is still the owner of that property?

A. Well, we haven't been told that we aren't—we aren't put out of it altogether.

Q. Is that the only basis of your knowledge, that you haven't been told that you have been put out?

A. Well, I don't know how to express that, to explain that to you.

Q. Well, will you try?

A. Could Mr. Karlin explain that to me what you mean by that? I don't know what he means by that.

Mr. Karlin: I guess not. I don't know, either, what the basis of her knowledge is as long as the corporation hasn't sold the property or conveyed or transferred it, I guess that would be a sufficient basis.

Mr. Ott: Q. Well, how do you know it?

A. I don't know of anything else. I just know that we were incorporation and—

Q. Did you examine the tract indices at the Court House here in Chicago?

Mr. Karlin: Just a minute, I object to that.

The Master: I don't suppose she knows what that means.

The Witness: I can't take care of all that legal end of it. I would have to devote all my time to it, and I just couldn't.

98 *Redirect Examination by Mr. Karlin.*

Q. You know that the corporation did have title to this property at one time, didn't it?

A. Yes, I do.

Q. Did it ever transfer, assign or convey this property out of its possession?

A. No, it didn't, not that I know of.

Motion by Mr. Ott: I move to strike the testimony of this witness on direct examination with respect to her statement that the corporation has had any existence within the last six months prior to the filing of the petition in this case, on the ground that this witness obviously doesn't know.

The Master: It may stand for what it is worth.

Motion by Mr. Ott: I move to strike also the testimony that the Forty-one Thirty-six Wilcox Building Corporation is still the owner of the property located at 4136 Wilcox Avenue, Chicago, Illinois, on the ground that the witness

does not know; and moreover, that the statement is a conclusion of this witness.

The Master: It may stand.

99 JOSEPH J. KARLIN, called as a witness on behalf of the debtor, having been first duly sworn, testified in narrative form as follows:

That there was a meeting held by the board of directors of the Forty-one Thirty-six Wilcox Building Corporation. That, to my best recollection at this time, it was held on the 10th day of May, 1935, in my office. That there was present Mrs. Fischel, here, Mr. Schulman and Hyman Schulman. That they had discussed with me at that time the question of filing a petition under Section 77 B of the Bankruptcy Act, and that at that time there was a meeting of the board of directors called instantly, and a resolution passed by the board of directors, consisting of Mrs. Fay Fischel, Samuel E. Schulman and Hyman Schulman, and they authorized the filing of this petition in bankruptcy on that date.

Mr. Ott: I have no objection to the testimony, except that it is our contention that there couldn't have been a duly constituted meeting of the board of directors, for the reason that the corporation was dissolved by the decree heretofore introduced into evidence as Chicago Title and Trust Company's Exhibit 1.

JOSEPH J. KARLIN, on cross examination, testified as follows:

There was one meeting of the stockholders to elect the directors on that same date, and then the same people
100 that were stockholders were elected directors. I don't know of any prior meetings held by this corporation prior to 1935.

Stipulation.

The following stipulation was entered into:

Edward Halligan filed an appearance for the Forty-one Thirty-six Wilcox Building Corporation in the case of Chicago Title and Trust Company, as successor trustee, *v.* Max Gurevitz *et al.*, being cause number 547687, in the Superior

Court of Cook County, Illinois, which was a proceeding to foreclose the lien of the first mortgage on said premises, and that Mr. Halligan has received accounts from the receiver.

(Whereupon the DEBTOR'S EXHIBITS 1, 2, 3, 4, 5 and 6 were offered and received in evidence, subject to the objection that the affidavits are not properly admissible in evidence, and that the assignments are not the assignments of the certificate itself.)

(DEBTOR'S EXHIBIT 7 was thereupon received in evidence over the objection of Mr. Ott that there was no such corporation as the Forty-one Thirty-six Wilcox Building Corporation in existence to whom such an assignment could be made, but the objection by Mr. Ott that there was no proof of the execution of the assignment was sustained.)

101 MITCHELL EDELSON, called as a witness on behalf of the debtor, having been first duly sworn, testified as follows:

Debtor's Exhibit 7 bears the signature of Myron D. Alexander. I am familiar with his signature.

MITCHELL EDELSON, on cross examination testified as follows:

I saw Myron D. Alexander sign Debtor's Exhibit 7. It was signed in my office. Myron D. Alexander is not an associate of mine. He is a friend of mine who came to my office with this situation and informed me that a relative of his owned a special block of bonds in this building and he asked me if I would cooperate with him in this case. That was, I would say, in the month of March or April, 1935. That was prior to the execution of Debtor's Exhibit 7. He said that Willens was a relative of his. Except for another matter prior to that time, I never represented Mr. Willens. Since then Mr. Willens came in on this matter and still another matter. Debtor's Exhibit 7 was executed about the date it bears. I believe it was on the date it bears. I am not positive of that. Consideration for the assignments of the master's certificate of sale, being Debtor's Exhibit 7, was their promise to file a petition under Section 77 B. Mr. Willens

owns $40,000 of bonds secured by the first mortgage trust deed on the premises involved, which is almost half of the issue. I am familiar with the case of Chicago Title and
102 Trust Company, as successor trustee, *v.* Gurevitz. I became familiar with that case about the date of the execution of Debtor's Exhibit 7, just before that date when I first saw Mr. Willens, he asked me to become familiar with it, and advise him in regard to it. I think the answer of the Chicago Title and Trust Company, as successor trustee, to the petition herein sets out the circumstances with reference to the decree, and I believe your dates are correct. I would have to refer to the answer of the Chicago Title and Trust Company to determine whether the assignment was given after the decree was entered. Apparently, the decree was entered on the same date as the date of Debtor's Exhibit 7. Our office prepared the petition that was filed in the case of Chicago Title and Trust Company *v.* Gurevitz on May 10, 1935, alleging that George Willens was the owner and holder of certain bonds secured by the trust deed. Petition was filed in that proceeding, and George Willens was then given leave to file an answer within ten days from the date of the filing of the petition. I don't know whether George Willens filed an answer. The answer of the Chicago Title and Trust Company sets that out.

Stipulation.

It was stipulated that the Metropolitan Trust Company was appointed receiver for the premises in the foreclosure proceeding under the name of Cook County Trust Company, and is now in possession of said premises.

103 MITCHELL EDELSON, called as a witness on behalf of the Chicago Title and Trust Company, as successor trustee, testified as follows:

Our office prepared the petition that was filed in the case of Chicago Title and Trust Company, as successor trustee, *v.* Gurevitz, to vacate the decree that was entered in that proceeding. Debtor's Exhibit 7 must have been executed subject to the decree because the decree was entered on or about the date the assignment bears, and the motion to vacate must have been made subsequent to the date of the entry of the decree. The decree was entered without notice to us, notwith-

standing that the order provided that notices in the proceedings should be served upon us. I believe we filed numerous objections to the master's report. I believe that the objections were filed after leave had been given to vacate the decree. I don't recall. I feel quite certain that they were filed afterwards. I directed the preparation of the objections. The objections were on behalf of George Willens, one of the bondholders. Mr. Willens paid the consideration for the assignments to the H. F. Newstedt Company and the Morton Manufacturing Company thru our office or thru Myron Alexander.

I have known Mr. Alexander for a good many years. I met him with reference to this transaction about the month of March or April, 1935. He told me that he represented Mr. Willens who had $40,000.00 worth of bonds in the case of Chicago Title and Trust Company *v.* Gurevitz, and he discussed in the various features of his client's holding in
104 that and in another issue, the Christensen issue. He informed me that he would like to recommend to Mr. Willens that he retain our office as well as himself to represent him in connection with his holding. He wrote or wired Mr. Willens and a day or two later Mr. Willens came into my office.

Debtor's Exhibits 2 to 7 were delivered to Samuel Schulman, but that was some time after Mr. Willens came to my office. Mr. Willens retained us in these two matters. We examined into the proceedings in both cases, and we found that hearings had been had in the case of Chicago Title and Trust Company *v.* Gurevitz, and we subsequently informed Mr. Willens that it was our opinion that a petition ought to be prepared, making Mr. Willens a party in the proceedings. We, accordingly, filed Mr. Willens' appearance shortly thereafter.

Thru Mr. Horwitz, I, inadvertently, learned that Sam Schulman was related to the owners of the capital stock of the Forty-one Thirty-six Wilcox Building Corporation. I asked him why he did not file a petition in this case under Section 77 B where it might be possible for him to work out a reorganization for his benefit, and he asked me what my interest in the matter was. I told him I represented Mr. Willens who had $40,000.00 in bonds, and I told him it would be more expedient and more economical to work out a reorganization under Section 77 B. He told me he would discuss it with the stockholders of the corporation and ask them to give it

serious consideration. I don't know who the stockholders were at the time. He told me that they were relatives of
105 his and that they held for the benefit of relatives of his who were interested in this building. I haven't any idea when the relatives acquired their interest in the corporation. A few days later Mr. Schulman called to see me and he said to me that it would be a good idea to file a petition under section 77B, but there were some junior liens outstanding and he would not want to file under section 77B unless they were acquired by the corporation. I asked him how much it cost to obtain the master's certificate. He told me he thought it could be obtained for less than $500.00. I wrote to Mr. Willens recommending Mr. Willens to pay out the money for the purpose of enabling us to deliver to the corporation the masters' certificate. Prior to the issuance of the deed, he authorized either our office or Mr. Alexander's to do so, and we requested Mr. Alexander to negotiate for it. Mr. Alexander negotiated for the master's certificate, and shortly after that it was acquired. I think it was about the same day. We finally got it. We paid to one of the companies a sum of money and the other company a sum of money. We learned the master's certificate was lost and we took proper affidavits in connection with the loss of the master's certificate, and took an assignment of the undivided interests in the certificate in favor of Mr. Alexander. The master's certificate was subsequently assigned by Mr. Alexander to the corporation, upon the corporation's promise to file a petition under Section 77B. There was some discussion as to what the corporation should receive in any reorganization. Mr. Schulman asked what we would do for them by way of voting our
106 bonds in the event of the reorganization. We said we would make any fair deal. There was a discussion as to what would constitute a fair deal to the stockholders of the corporation, but it was mostly suggestions made by Mr. Schulman, and I told Mr. Schulman to file his petition first, and we would—as far as we were concerned—vote for any deal that was fair because we told him we believed first of all in a reorganization and then we would have a proper accounting from the successor trustee, which we didn't believe was had in the State Court.

The master in chancery in his report found that the sum of $12,613.43 had been received by the trustee; that the sum of $9,898.72 had been expended. As I understand the master's report, that money was collected by the Madison & Ked-

zie State Bank who was the predecessor trustee, I believe. I am not quite positive on that. I don't believe that the accounting made by the Madison & Kedzie State Bank is a proper accounting. I don't know what the accounting was that was made before the master in chancery. All I know is that a number of figures had been submitted to the master in chancery in the state court, and I feel that there probably would be a whitewash of that predecessor trustee's action. That applies to the fact that counsel for the plaintiff in that case were requesting a fee of $3,755.00. I don't know whether it is the Chicago Bar schedule fee or not. It may be, but I feel that the expense, plus the charge of the proper accounting would be an expense, and would give the bondholders
107 merely the opportunity to participate in the proceeds of a sale which would, in itself, not amount to a proper reorganization of the bondholders' interest.

In my opinion, almost any arrangement that could be had in the Federal Court under Section 77B would be more advantageous than in the state court, in view of the fact that a bid could only afford to the owner of the equity of redemption and junior mortgage holder an opportunity to redeem the property from some ridiculously low bid; any other alternative would give the bondholders' committee who do not represent the substantial bondholders in this case, an opportunity to acquire the title at some ridiculous figure for their benefit and the benefit of the bonds deposited with them, subject to an opportunity to redeem from some ridiculously low bid which would leave my client in a position where he would be helpless, and he might receive five to fifteen cents on the dollar for his bond.

I feel that a reorganization under Section 77B would be much more advantageous no matter what deal was given to the equity owner. I cannot conceive of a deal that would give the owner of the equity of redemption anything that would be less desirable than the completion of the proceedings in the state court.

I directed that the master's report be examined by Mr. Wise of our office. That was done prior to the filing by the corporation of the petition under Section 77B. We filed our appearance in the foreclosure proceedings about fourteen days before the decree was vacated.

108 Mr. Ott: We admit that the failure to serve your office was an oversight, due to the fact that the appearance was entered so late.

The objections set forth in the answer filed in this proceeding by the Chicago Title and Trust Company are the objections which were filed by your office on behalf of George Willens. We objected to the allowance of a fee of $1,075.00 of the Chicago Title and Trust Company. We objected to the allowance of $3,755.00 to the attorneys for the plaintiff. I do not believe the state court has any authority to vacate a sale that is had unless fraud can be proven or cicumstances tanamount to fraud. I believe that the decision in the Rubin case that the prior authorities that we had in years gone by will be in fact upheld by the Supreme Court of this state, and that the judge in the state court has not the authority to set aside a sale unless fraud or circumstances tantamount to fraud can be proven.

I recognize the expense that would accrue to our client in an attempt to upset the sale, and I feel to saddle such an expense on him would be an additional reason for filing the petition under Section 77B in the Federal Court by the corporation.

I believe that any judge in the state court who assumes to set aside a sale merely on the showing of inadequacy of bid or attempt to show cuch inadequacy, is exceeding his discretion. There is no question that Mr. Willens who owns one-half of this issue, would be unable to protect his
109 interests at a sale. I believe that this property would be sold at a ridiculously low figure because there is no agreement among the bondholders that would make a high bid possible. Mr. Clarence Edelson of our office and Mr. Myron Alexander had conversations with Mr. Swanson, who is chairman of the bondholders' protective committee, with respect to a switch of bonds held by Mr. Willens on this building for bonds which the committee held on another building, in order to consolidate their holdings. It was that fact which determined in my mind that it would be impossible for the bondholders to agree because it was apparent that Mr. Swanson was desirous that all of the bonds of this issue be held by his committee and that Mr. Willens participate only in the Christensen building and not in this building. That was a matter of negotiation between Mr. Willens and Mr. Swanson. There is no question in my mind but that this building is more desirable than the Christensen building.

Conversations with regard to the trading of bonds on these two buildings were held both before and after the filing of this petition in these proceedings. Any negotiations subsequent were with unauthorized persons.

MR. MITCHELL EDELSON, on cross-examination by Mr. Karlin, testified as follows:

When I spoke to Mr. Schulman about filing this petition under section 77B, it was merely a suggestion that I made to him. There were no other arrangements that I had with Mr. Schulman in my negotiations with him in which
110 any other consideration was promised to him than I have already stated. The only consideration for the delivery of Debtor's Exhibit 7 was his agreement to cause the corporation to file a petition under section 77B for its reorganization. Mr. Schulman also felt that the filing of the petition under section 77B would be more advantageous for himself.

JOSEPH J. KARLIN, called as a witness on behalf of the Chicago Title and Trust Company, as successor trustee, having been first duly sworn, testified as follows:

My name is Joseph J. Karlin. I am an attorney at law. I don't know Mr. Willens. I know Mr. Edelson here. I didn't know him at the time the petition was filed. The information I got from Mr. Sam Schulman he gave it to my office. We discussed the filing of this petition. Some time prior to the filing of it, we discussed with Mr. Schulman the benefits under section 77B. He came into the office in respect to the filing of a petition under section 77B. I represented Mr. Schulman for about six or seven years. I still represent him and I have been continuously representing Mr. Schulman, and have also represented the other members of his family from time to time. The Forty-one Thirty-six Wilcox Building Corporation obtained title to the property from Max Gurevitz. I didn't organize the corporation. I believe I represented Mr. Schulman or his family at that time. The Schulmans' obtained their interest in the stock ownership of the corporation from its inception. As I remember the situation, the
111 stock was first issued to Mr. Gurevitz who held it merely in trust for the family of Mr. Schulman, and he took title merely for the purpose of conveying it to the corporation at the time. The corporation assumed the indebtedness. I was so informed by Mr. Schulman and Mrs. Fay Fischel.

JOSEPH J. KARLIN, on cross-examination by Mr. Mitchell Edelson, testified as follows:

The corporation was organized April 10, 1929; such interest as has been paid on this indebtedness was paid by the corporation. I know Mr. Gurevitz. I do not know what his business is at the present time. He was employed in the office of Mr. Schulman. I don't know what salary he was drawing. I believe he was employed by Mr. Schulman at the time he executed the notes secured by the trust deed dated March 20, 1929. I could not say definitely.

The exhibits offered and admitted in evidence on behalf of the respective parties were as follows:

O. K.

JACOB J. KARLIN

112 DEBTOR'S EXHIBIT 1.

Filed Nov 14 1935 Charles A. McDonald, Master in Chancery.

Certificate Number 1380 Book 557 Page 599.

STATE OF ILLINOIS.

Office of the Secretary of State.

(Cut)

To all to whom these Presents Shall Come, Greeting:

Whereas, a Statement of Incorporation, duly signed, acknowledged and verified under oath, has been filed in the Office of the Secretary of State, on the 10th day of April, A. D. 1929 for the organization of the Forty-one Thirty-six Wilcox Building Corporation under and in accordance with the provisions of "An Act in relation to corporations for pecuniary profit" approved June 28, 1919, and in force July 1, 1919, and all acts amendatory thereof, a copy of which statement is hereto attached;

Now Therefore, I, William J. Stratton, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said Forty-one Thirty-six Wilcox Building Corporation is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 10th day of April, A. D. 1929 and of the Independence of the United States the one hundred and 53rd.

WILLIAM J. STRATTON
Secretary of State.

(Seal)

113 A 21796 Apr 10 '29

Book 557 Page 600

(This Statement Must Be Filed in Duplicate)

(Stamp) Paid Apr 10 1929 $20.00 RRP 13.35 F.T.

State of Illinois, } ss.
Cook County, }

To William J. Stratton, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois,

Name	Address			
	Number	Street	City	State
Maurice H. Nierenberg,	801	Conway Bldg.,	Chicago,	Ill.
Mary Henry,	801	Conway Bldg.,	Chicago,	Ill.
Max Brooks Gurevitz,	801	Conway Bldg.,	Chicago,	Ill.

propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to wit:

1. The name of such corporation is Forty-one Thirty-six Wilcox Building Corporation.
2. The object for which it is formed is For Acquiring, Owning, Erecting, Leasing and Operating only one building and the site therefor and for no other purpose.
3. The duration of the corporation is Ninety-nine (99) Years.
4. The location of the principal office is 801 Conway Bldg., 111 W. Washington St., City of Chicago, County of Cook, State of Illinois.
5. The total authorized capital stock is { Preferred $ None / Common $5,000.00 } and No shares of { Preferred / Common } without par value.
6. The amount of each share having a par value is $100.00.
7. The number of shares having a par value is 50.
8. The number of shares of no par value is None.

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9. The name and address of the subscribers to the capital stock, and the amount subscribed and paid in by each, are as follows:

Name	Address Number Street City State	Number of Shares	Amount Subscribed	Amount Paid in
Maurice H. Nierenberg	801-Conway Bldg., Chgo, Ill.	1	$ 100.00	$ 100.00
Mary Henry	801-Conway Bldg., Chgo, Ill.	1	100.00	100.00
Max Brooks Gurevitz	801-Conway Bldg., Chgo, Ill.	48	4800.00	4800.00

10.*

Notice.—In case subscription list or preferred stock provisions are too long to get in the above space, insert at this place on separate sheet of legal cap leaving two inches at top for binding.

115 Book 557 Page 602

11. Amount of capital stock which it is proposed to issue at once:

(a) On shares having no par value.....
Preferred $.....
Common $ None

(b) On shares having a par value of $100.00.....
Preferred $ None
Common $5,000.00

12. Amount of capital stock actually paid in:

(a) On shares having no par value.....
Preferred $ None
Common $ None

(b) On shares having a par value of $100.00.....
Preferred $ None
Common $5,000.00

13. Amount of capital stock paid in cash is.....$ None

14. Capital stock paid in property as follows:.....$5,000.00

15. The location and general description of such property is as follows: Lots 34 and 35 in Block 3 in W. M. Derby's Subdivision of the Northeast ¼ of the Northeast ¼ of Section 15, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

16. The management of the corporation shall be vested in Three directors.

17. The name and address of the first board of directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

Name	Address Number Street City State	Terms for Which Elected
Maurice H. Nierenberg	801-Conway Bldg., Chicago, Ill.	Until the First
Mary Henry	801-Conway Bldg., Chicago, Ill.	Meeting of Board
Max Brooks Gurevitz	801-Conway Bldg., Chicago, Ill.	of Directors.

18. Subject to the conditions and limitations prescribed by "The General Corporation Act" of Illinois, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue and be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount and divided into shares, with a par value or without a par value, and to divide such capital stock into such classes, with such preferences, rights, values and interests as may be provided in the Articles of Incorporation, or any amendment thereof; and in case provision be made therefor in the Articles of Incorporation, or any amendment thereof, any and all classes of preferred stock may be issued in one or more series of the same class, each such series carrying such rate of dividends not exceeding eight per cent. (8%) per annum, or such lesser amount as may be fixed in the Articles of Incorporation, or any amendment thereof, and the shares of each such series being redeemable at such redemption price and bearing such particular designation as the Board of Directors subject to such restrictions as may be imposed in the Articles of Incorporation, or any amendment thereof, shall, by resolution, determine and fix prior to the issue of any such stock of such series: Provided, however, that whenever the Board of Directors shall, by resolution, have authorized any such series of preferred stock, a copy of such resolution, duly certified by the secretary or assistant secretary of the corporation, and under its seal, and the facts set up in such certificate verified by the oath of the President or Vice-President shall be transmitted to the Secretary of State, and if the same shall conform to law and to the Articles of Incorporation, and all amendments thereof, the same shall be filed in the office of the Secretary of State.

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey or transfer the same; and to acquire and

to own real property, improved or unimproved for the purpose of providing homes for its employes or aiding its employes to acquire and own homes and to improve, lease, mortgage, contract to sell, sell, convey or transfer the same, and to loan money to its employes for such purpose upon such terms as may be agreed upon.

To own, purchase, or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign;

To borrow money at such rate of interest as the corporation may determine without regard to or restrictions under any usury law of this State, and to mortgage or pledge its property, both real and personal, to secure the payment thereof;

To elect officers, appoint agents, define their duties and fix their compensation;

To lease, exchange or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital stock of the corporation at any annual meeting or at any special meeting called for that purpose;

To make by-laws not inconsistent with the laws of this State for the administration of the business and interests of such corporation;

To conduct business in this State, other states, the district of Columbia, the territories, possessions and dependencies of the United States and in foreign countries and to have one or

116 Book 557 Page 603

more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of the corporation;

In time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to loan money to the State or Federal government for war purposes;

To cease doing business and to surrender its charter;

To have and exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed.

19. An estimate of the per cent. of tangible property of the corporation to be used in Illinois for the following year is 100%.

20. An estimate of the per cent. of the business of the corporation which will be transacted at or from places of business in Illinois for the following year is 100%.

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

801-Conway Bldg., 111 W. Washington St., Chicago, Ill.

MAURICE H. NIERENBERG,
MARY HENRY,
MAX BROOKS GUREVITZ,
Incorporators.

State of Illinois } ss. No. 10337889
Cook County }

Filed for Record 1929 Apr 12 PM 1 30 and Recorded in Book 557 Page 599.

CLAYTON F. SMITH,
Recorder.

Oath and Acknowledgment.

State of Illinois, } ss.
Cook County }

I, Ben B. Nierenberg, a Notary Public in and for the County and State aforesaid, do hereby certify that on the 15th day of March, A. D. 1929, personally appeared before me Maurice H. Nierenberg, Mary Henry Max Brooks Gurevitz, to me personally known to be the same persons who executed the foregoing and severally acknowledged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

BEN R. NIERENBERG,
Notary Public.

(Seal)

Corporation for Pecuniary Profit.

Fees Payable in advance.

Statement of Incorporation of Forty-One Thirty-Six Wilcox Building Corporation.

Filed Apr 10 1929 William J. Stratton, Sec'y of State.

Incorporation Fees.

Initial fee of 1/20 of one per cent. on the issued capital stock, with a minimum fee of $20.00, also franchise fee as required by Section 129 of the General Corporation Act.

*Note.—In paragraph 10 you should set out a description of the rights and preferences of the holders of preferred stock, or any other provision for the regulation of the business and the conduct of the affairs of the corporation. In case of a building corporation you will also give in the same space a specific and definite description of the site of such building. In order to avoid delay read carefully each paragraph in the statement before interpolating the data required. Before execution of the statement compare every recital in the statement and see whether or not it balances with every other recital relating to the same matter.

117 Notice to Corporations.

Every incorporated company, other than banking, building and loan, and insurance companies, religious corporations and corporations organized not for pecuniary profit are required to make and file in the office of the Secretary of State in February of each year an annual report and severe penalties are inflicted for failure to do so.

Corporations are also required to file all amendments to their articles of incorporation.

The certificate of incorporation and all amendments thereto must be recorded in the office of the County Recorder of the County in which the business office of the corporation is located within ten days from the issuance thereof.

118 Box 1249.

Certificate of Incorporation of 4136 Wilcox Bldg. Corp.

State of Illinois,
Office of the
Secretary of State.

119 DEBTOR EXHIBIT 2.

Filed Nov 14 1935 Charles A. McDonald,
Master in Chancery

State of Illinois } ss.
County of Cook }

H. F. NEWSTEDT being duly sworn, on oath says that he is the president of the H. F. Newstedt Heating Company and has been its president since the company was organized; that the Master's Certificate executed by Isidore Brown, Master in Chancery of the Circuit Court of Cook County in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, case number B-207163, has not heretofore been assigned by the said H. F. Newstedt Heating Company and that it has the full power to execute an assignment of its interest in said certificate; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of the H. F. Newstedt Heating Company at this time and to pay a consideration for such assignment.

H. F. NEWSTEDT.

Subscribed and Sworn To before me this 7th day of May, A. D. 1935.

MARSHALL S. HOWARD,
(Seal) *Notary Public.*

120 DEBTOR EXHIBIT 3.

Filed Nov 14 1935 Charles A. McDonald,
Master in Chancery

For Value Received, the H. F. Newstedt Heating Company, a corporation, hereby sells, transfers, sets-over and assigns, to Myron D. Alexander all its right, title and interest in and

to a certain Master's Certificate, executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al, case number B-207163, dated the 5th day of August, 1931, showing the sale of the property described as:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois, and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

Said company has a 74.1 interest in said certificate which is the interest herein assigned.

In Witness Whereof the said Newstedt Heating Company, has caused these presents to be signed by its president, and has caused its corporate seal to be affixed this 7th day of May, 1935.

H. F. NEWSTEDT HEATING CO.,
By H. F. NEWSTEDT,
its president.

(Seal)

Attest:
CARRIE M. NEWSTEDT,
Secretary.

121 DEBTOR EXHIBIT 4.

Filed Nov 14 1935 Charles A. McDonald,

Master in Chancery

State of Illinois } ss.
County of Cook }

E. C. HOWARD being first duly sworn, on oath says that he received from Isidore Brown, Master in Chancery of the Circuit Court of Cook County, the Master's Certificate executed by said Master in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, et al, case number B-207163, on behalf of his client, the said H. F. Newstedt Heating Company, and that he has filed said certificate away in some file; that he has recently been looking for said

certificate, but has been unable to find it and believes said certificate is in his office, but has been mis-filed; that said certificate was not assigned and is in the same condition as when he received it from said Master; that he will continue to search for said certificate and believes it will be found in due course of time; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of said H. F. Newstedt Heating Company in and to said certificate and to pay a consideration therefor, and this affiant further promises that when he finds said original Masters Certificate, he will obtain a new assignment thereof from the said H. F. Newstedt Heating Company and deliver it to said Myron D. Alexander.

E. C. HOWARD.

Subscribed and Sworn To before me this 9th day of May, A. D. 1935.

MARSHALL S. HOWARD,
Notary Public.

(Seal)

122 DEBTOR EXHIBIT 5.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

For Value Received, the Morton Manufacturing Company, a corporation, hereby sells, transfers, sets-over and assigns to Myron D. Alexander all its right, title and interest amounting to, at least, twenty-five and nine-tenths per cent (25.9%) in and to a certain Master's Certificate executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al., case number B-207163, dated the 5th day of August, 1931, showing the sale of the property described as:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

In Witness Whereof the said Morton Manufacturing Company, a corporation, has caused these presents to be signed by its president and has caused its corporate seal to be affixed this 24th day of May, A. D. 1935.

MORTON MANUFACTURING COMPANY,
By CHARLES B. MORTON,
President.

Attest:
EARL M. SMITH,
Secretary.

123 DEBTOR EXHIBIT 6.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

State of Illinois } ss.
County of Cook }

CHARLES D. MORTON, being duly sworn on oath says that he is the president of the Morton Manufacturing Company, a corporation; that the Master's Certificate executed by Isidore Brown, Master in Chancery of the Circuit Court of Cook County in the case of H. F. Newstedt Heating Company *vs.* 4136 Wilcox Building Corporation, case number B-207163, has not heretofore been assigned by the said Morton Manufacturing Company, a corporation, and that it has full power to execute an assignment of its interest in said certificate; that he makes this affidavit for the purpose of inducing Myron D. Alexander to accept an assignment of the interest of the Morton Manufacturing Company, a corporation, at this time and to pay a consideration for such assignment.

CHARLES D. MORTON,
President.

Subscribed and Sworn to before me this 24th day of May, A. D. 1935.

CHESTER C. SHERMAN,
Notary Public.

(Notarial Seal)

124 DEBTOR EXHIBIT 7.

Filed Nov 14 1935 Charles A McDonald,
Master in Chancery.

For Value Received the undersigned, Myron D. Alexander, hereby sells, transfers, sets over and assigns to 4136 Wilcox Building Corporation, a corporation, all his right, title and interest in and to a certain Master's Certificate executed by Isidore Brown, a Master in Chancery of the Circuit Court of Cook County, Illinois, in the case of H. F. Newstedt Heating Company, a corporation, *vs.* 4136 Wilcox Building Corporation, a corporation, et al., case No. B-207163, dated the 5th day of August, A. D. 1931, showing the sale of the property described as—

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois, and commonly known and described as 4136 Wilcox Avenue, Chicago, Illinois.

In Witness Whereof the said Myron D. Alexander has hereunto affixed his hand and seal this 24th day of May, A. D. 1935.

MYRON D. ALEXANDER (Seal)

125 CHICAGO TITLE & TRUST COMPANY EXHIBIT 1.

Filed Oct. 30, 1935, Charles A. McDonald,
Master in Chancery.

Plactica—Superior Court of Cook Cook County (Decree).

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable Denis E. Sullivan, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and

holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday, being the Fourth day of May, in the year of our Lord one thousand nine hundred and thirty One and of the Independence of the United States of America, the one hundred and fifty Fifth.

Present:

The Honorable Denis E. Sullivan, Judge of the Superior Court of Cook County.

John A. Swanson, State's Attorney.

William D. Meyering, Sheriff of Cook County.

Attest: Frank V. Zintak, Clerk.

Be it remembered that heretofore, to-wit: on the 22nd day of May in the year of our Lord one thousand nine hundred and thirty One, the same being one of the days of the May Term of the Superior Court of Cook County the following among other proceedings were had in said Court and entered of record, to-wit:

126 IN THE SUPERIOR COURT OF SAID COUNTY,

To the March Term, A. D. 1931,

State of Illinois, } ss.
County of Cook, }

(Stamp) Entered May 22 1931 Judge Denis E. Sullivan.

The People of the State of Illinois *ex-rel.* Oscar E. Carlstrom, Attorney General, *vs.* Forty-One Thirty-Six Wilcox Building Corporation.	Dissolution of Corporation. In Chancery. No. 53735.

DECREE.

And now on this day comes the complainant, the People of the State of Illinois, upon the information of Oscar E. Carlstrom, Attorney General, and it appearing to the court from the writ issued herein to the sheriff of Cook County, Illinois, and his return thereon, that the defendant, the said

Forty-One Thirty-Six Wilcox Building Corporation cannot be found in said county, and it further appearing to the court that the said defendant's last known postoffice address as shown by the certificate of the Secretary of State was in the city of Chicago, Illinois, and upon due inquiry said defendant cannot be found and its place of residence upon diligent inquiry cannot be ascertained, and that due notice of the pendency of this proceeding has been given by publication for at least three (3) weeks successively, in accordance with the statute in such cases made and provided, by notice published in the National Corporation Reporter, a secular newspaper, printed, regularly issued and having a general circulation, and having been so regularly published for more than six (6) months prior to the first publication of said notice, in the county of Cook, and State of Illinois, the first insertion having been made on the 5th day of March, A. D. 1931, at least thirty (30) days prior to the first day of the present term of this court; that the Attorney General did, within ten (10) days of the first publication of such notice, send a copy thereof by mail, addressed to the corporation at its principal office in this State, as shown by the records in the office of the Secretary of State and has presented to this Court a certificate to that effect; and said defendant having been three times called in open court to plead, answer or demur to the complainant's bill, comes not, but herein makes default; it is therefore ordered, adjudged and decreed that the said bill be taken as confessed against the said Forty-One Thirty-Six Wilcox Building Corporation.

And thereupon this cause coming on for final hearing upon the bill taken as confessed by the said defendant, upon the exhibits and testimony heard in open court, and the cause having been argued by counsel, and the court being fully advised in the premises, doth find, that the court has jurisdiction of the subject matter of this cause and of all the parties herein named, that the material allegations contained in the complainant's bill are true as therein stated and that the equity of the cause is with the complainant.

The court further finds that the Forty-One Thirty-Six Wilcox Building Corporation was incorporated on the 10th day of April, 1929, under and in accordance with the provisions of an act of the General Assembly of the State of Illinois entitled, "An Act Concerning Corporations" approved April 18, 1872, in force July 1, 1872, As Amended.

That the location of the business office of the said defend-

ant was in the city of Chicago, county of Cook and State of Illinois.

That the said defendant and its board of directors have ceased to transact business as a corporation, have discontinued the exercise of corporate functions and have failed to comply with an act entitled, "An act in relation to corporation for pecuniary profit," in force July 1, 1919, and all subsequent amendments thereto, relative to the filing of annual reports and payment of license fees or franchise taxes.

That the notice required by section 7 of an Act entitled, "An Act requiring corporations to make annual report to the Secretary of State, and providing for the cancellation of the articles of incorporation for failure to do so, and to repeal a certain act therein named," in force July 1, 1901, and all subsequent amendments thereto, was mailed to the last known address of said defendant on or about the 10th day of January A. D. 1931.

That said corporation was certified by the Secretary of State to the Attorney General for failure to pay the franchise taxes and/or for to file annual report in accordance with the provisions of the General Corporation Act and was so certified for the purpose of instituting proceedings for dissolution of said corporation for abandonment and non-use of charter, for failure to file annual report and/or for failure to pay franchise tax, on the 15th day of November A. D. 1930.

That no report as required by the General Corporation Act and no payment of the license fees or franchise taxes and penalties due and legal costs of suit have been made by said corporation during the pendency of this suit.

It Is Therefore Ordered, Adjudged and Decreed by the court that the prayer of complainant's bill herein be, and the same is hereby granted.

It Is Further Ordered, Adjudged and Decreed by the court that the said defendant corporation the, Forty-One Thirty-Six Wilcox Building Corporation be, and the same is hereby dissolved, and that the charter and authority of said corporation be, and the same is hereby declared to be null and void and of no force and effect whatever, and that said defendant pay the cost of this suit, and that the clerk of this court certify the fact of such dissolution to the Secretary of State of Illinois.

DENIS E. SULLIVAN,
Judge.

MM

127 State of Illinois, } ss.
County of Cook. }

I, Frank V. Zintak, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree made and entered of record in said court in a certain cause lately pending in said Court on the Chancery side thereof, wherein The People ex rel. Oscar E. Carlstrom Etc. Were complainants and Forty-One Thirty-Six Wilcox Bldg. Corp. Was defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 10th day of October, A. D. 1935.

FRANK V. ZINTAK,
Clerk.

128 CHICAGO TITLE & TRUST COMPANY EXHIBIT 2.

Filed Oct. 30, 1935. Charles A. McDonald, Master in Chancery.

Certificate Number 10115.

STATE OF ILLINOIS
Office of The Secretary of State
(Emblem)

To all to whom these Presents Shall Come, ~~Greeting~~:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the Certificate of Decree of Dissolution of the Forty-One Thirty-Six Wilcox Building Corporation, dated May 22nd, 1931, the original of which is now on file and a matter of record in this office.

In ~~Test~~imony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 10th day of October A. D. 1935.

EDWARD J. HUGHES,
Secretary of State.

(Seal)

129 State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF SAID COUNTY.

March Term, A. D. 1931.

The People of the State of Illinois at the Relation of Oscar E. Carlstrom, Attorney General, *vs.* Forty-One Thirty-Six Wilcox Building Corporation. } General No. 53735 In Chancery.

To the Honorable William J. Stratton, Secretary of State, Springfield, Illinois.

I, Frank V. Zintak of the Superior Court, aforesaid, do hereby certify that a decree dissolving the above corporation was entered by the said Superior Court on the 22nd day of May, A. D. 1931, and that the original decree is on file in my office, and that I am the lawful keeper thereof.

Witness my hand and official seal this 26th day of June, A. D. 1931.

FRANK V. ZINTAK,
Clerk of the Superior Court of Cook County.

130 CHICAGO TITLE & TRUST COMPANY EXHIBIT 3.

Filed Oct 30 1935 Charles A. McDonald, Master in Chancery.

Transcript of Proceedings Form 36A

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable D. J. Normoyle one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and holden at Chicago, in the Court House in said County and State, on the third Monday, (being the 18th day) of June in the year of Our Lord one thousand nine

hundred and 31, and of the Independence of the United States the one hundred and 55.

Present, Honorable D. J. Normoyle one of the Judges of the Circuit Court of Cook County, State of Illinois.

JOHN A. SWANSON, *State's Attorney*
WILLIAM D. MEYERING, *Sheriff.*

Attest:
THOMAS O. WALLACE, *Clerk.*

Be It Remembered, that at the term aforesaid, to-wit: On the 16th day of July A. D. 1931, the following among other proceedings were had and entered of record in said Court, to-wit:

131 Judge D. J. Normoyle
Jul 10 1931

State of Illinois } ss:
County of Cook }

IN THE CIRCUIT COURT OF COOK COUNTY.

H. F. Newstedt Heating Company, a corporation
vs.
4136 Wilcox Building Corporation, a corporation, *et al.* } B-207163

DECREE.

This day comes the complainant, H. F. Newstedt Heating Company, a corporation, by E. C. Howard, its solicitor, and also comes the defendants, Morton Manufacturing Company, a corporation by William J. Ruttenberg, its solicitors, the Madison and Kedzie State Bank, a corporation by Ryan, Condon and Livingston, its solicitors and it appearing to the court that the defendants 4136 Wilcox Building Corporation, a corporation and the Chicago Title and Trust Company, as trustee have been heretofore defaulted herein and said bill of complaint taken as confessed by them and this cause coming on to be heard upon the bill of complaint of said complainant, the answer in nature of an intervening petition of Morton

Manufacturing Company, a corporation, the answer of the Madison-Kedzie State Bank and the replication of said complainant to said answers and the report of Isidore Brown, one of the Masters in Chancery to whom this cause has been heretofore referred and it appearing to the Court that no objections or exceptions have been filed to said report and the court having read said report and having heard arguments of counsel and being fully advised in the premises, finds that said report ought to be approved.

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The Court further finds that it has jurisdiction of all the parties to said suit and of the subject matter hereof.

The Court further finds as follows:

That on towit, the 23rd day of February, 1929 and for some time prior thereto, the 4136 Wilcox Building Corporation, a corporation, was the owner of the following described real property:

Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's Subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois and commonly known as described as number 4136 Wilcox Avenue, Chicago, Illinois.

That on said 23rd day of February, 1929, said 4136 Wilcox Building Corporation, by its president, Max Gurevitz, entered into a written contract with the complainant herein for the furnishing and installation of a one pipe heating system in the building located on the premises involved herein for in accordance with certain specification set forth in said contract; that the contract price for the labor and materials to be furnished under said contract, was the sum of Eight Thousand Five Hundred and Fifty Dollars ($8550.00) payable as follows: 85 per cent when the job was roughed in and the balance when the job was completed and tested.

The Master further finds that pursuant to the terms of said contract the complainant herein commenced to furnish the labor and materials necessary under said contract and completed said work on the 27th day of September, 1929.

That the sum of Eight thousand and fifty dollars ($8050)

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was paid to the complainant on account of the moneys due to it under the terms of said contract leaving a balance due to it in the sum of Five hundred dollars ($500.00)

That on the 11th day of January, 1930 said complainant filed its claim for lien in the office of the Clerk of the Circuit Court of Cook County, Illinois against the said premises involved herein in the sum of Five hundred dollars ($500.00) in due form of law and in accordance with the statute in such case made and provided.

That no further sums were paid to said complainant on account of its aforesaid contract; that the labor and materials furnished by said complainant for the said premises entered into and became a permanent part of the improvements located thereon and enhanced the value thereof to an amount in excess of the cost of said labor and materials; that due to the enhancement in value of said premises, said complainant has a valid and subsisting lien against said premises for the balance of Five hundred dollars ($500.00) due and owing to it together with interest thereon at five per cent per annum from September 27, 1929.

That on the 10th day of June, 1929 the said 4136 Wilcox Building Corporation, by Max Gurevitz, its president, entered into a written contract with the Morton Manufacturing Company, a corporation for the furnishing of thirty-five bath room cabinets for use in the building located on said premises; that the contract price for said materials was the sum of Two hundred four dollars and seventy-five cents ($204.75).

That pursuant to the terms of its contract said Morton Manufacturing Company commenced to furnish the materials required of it under its said contract on or about the 2nd day

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of August, 1929 and completed the delivery of such materials on the 24th day of September, 1929.

That thereafter, on the 28th day of January, 1930 said Morton Manufacturing Company, a corporation filed its claim for lien in the office of the Clerk of the Circuit Court of Cook County, Illinois against said premises, under number 176209, in the sum of Two hundred four dollars and seventy-five cents.

That on the 24th day of June, 1930 the sum of Twenty-five dollars was paid to said Morton Manufacturing Company on

account of the moneys due it under its claim for lien aforesaid leaving a balance due and owing said Morton Manufacturing Company for the materials supplied for said premises, in the sum of One hundred seventy-nine dollars and seventy-five cents.

That the materials furnished by said Morton Manufacturing Company, in connection with said premises, entered into and became a part of the improvements located thereon and enhanced the value thereof to an amount in excess of the cost of said materials; that due to the enhancement of the value of said premises, the said company has a valid and subsisting lien against said premises for the balance of One hundred seventy-nine dollars and seventy-five cents ($179.75) due and owing to it together with interest thereon at the rate of five per cent per annum from the 24th day of September, 1929.

That the liens of said complainant and said Morton Manufacturing Company, a corporation are on a parity each with the other; that said lien claimants have valid and subsisting liens against said premises for the respective amounts due to them together with interest thereof which liens are in every respect similar and are of the same force and effect; that the

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135 —5—

liens of the complainant and said intervening petitioner are prior, paramount and superior to the rights and interests of all other parties to this suit who have been duly served with process; that said liens are subject however, to the outstanding rights of the owners and holders of the principal notes and interest coupons secured by the trust deed against said premises recorded prior to the time said liens attached.

It Is Therefore Ordered, Adjudged and Decreed that the above entitled cause be and the same is hereby dismissed as to Unknown Owners.

It Is Further Ordered, Adjudged and Decreed that said Master's Report be and the same is hereby approved and confirmed.

It Is Further Ordered, Adjudged and Decreed that the defendant, 4136 Wilcox Building Corporation, a corporation, pay to the complainant, H. F. Newstedt Heating Company, a corporation, within three days from the date of the entry of this decree, the sum of Five Hundred Dollars ($500.00) with interest thereon at the rate of five per cent per annum from the 27th day of September, 1929 until paid and Master's fees

and including the charges of the court reporter engaged by said Master, hereby taxed in the sum of $64.90 and that said defendant pay to said Morton Manufacturing Company, a corporation, within three days hereof, the sum of One Hundred Seventy-nine and 75/100 Dollars ($179.75) with interest thereof at the rate of five per cent per annum from the 24th day of September, 1929 until paid.

It Is Further Ordered, Adjudged and Decreed that in default of said payments within the time hereinabove specified, that then the above described premises, towit:

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Lots thirty-four (34) and thirty-five (35) in Block three (3) in W. M. Derby's subdivision of the Northeast quarter of the Northeast quarter of Section fifteen (15), Township thirty-nine (39) North, Range thirteen (13), East of the Third Principal Meridian in Cook County, Illinois, and commonly known as 4136 Wilcox Avenue, Chicago, Illinois.

or so much thereof as may be sufficient to realize the amount so due the complainant and the Morton Manufacturing Company, a corporation as aforesaid for principal interest and costs of this suit and which may be sold separately without material injury to the parties in interest, be sold at public auction, for cash, to the highest and best bidder, at the rooms of the Chicago Real Estate Board, Number 57 West Monroe Street, Chicago, Illinois.

It Is Further Ordered, Adjudged and Decreed that Isidore Brown, a Master in Chancery of this court, shall execute this decree; that said Master give public notice of the time, place, and terms of said sale by previously publishing the same once each week for three successive weeks in a secular newspaper of general circulation in Cook County, Illinois; that said complainant or the Morton Manufacturing Company, or any of the parties to this suit may become the purchaser or purchasers.

The Master may at any time in his discretion, for good cause shown, adjourn the sale so advertised; he shall execute a certificate of sale to the purchaser or purchasers at such sale as required by law and shall cause a duplicate certificate to be recorded in the Recorder's office of Cook County, Illinois; that said certificate shall specify the premises purchased, the sum paid therefor and the time when said purchaser shall be

entitled to a deed unless said premises shall be redeemed according to law.

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137 —7—

Out of the proceeds of such sale said Master shall retain his fees, disbursements and commissions; he shall then pay to said complainant or its solicitor of record and to the Morton Manufacturing Company, or its solicitor of record, the amounts due them under this decree with interest thereon at the rate of five per cent per annum from the date of this decree to the date of such sale and all taxable costs advanced or paid by said complainant and the Morton Manufacturing Company, if the remainder of the proceeds be sufficient; if not sufficient, he shall apply the remainder to the extent to which it may reach in satisfaction of the amounts due said complainant and said Morton Manufacturing Company in the ratio that their respective claims as found in this decree, bear to the remainder of such proceeds, and report the deficiency; if there shall be a surplus, he shall bring it into court and abide the further order of the Court therein.

It Is Further Ordered, Adjudged and Decreed that the defendants, and all persons claiming thru or under them, be forever barred and foreclosed from all right and equity of redemption in and to said premises, or any part thereof so sold, if the same are not redeemed within the time required by law and that at the expiration of fifteen months next after the day of said sale, if the premises so sold are not redeemed as aforesaid, said Master, or his successor in office shall execute and deliver to the purchaser or purchasers at such sale, his or their heirs, executors, administrators and assigns, a good and sufficient conveyance of all the right, title and interest of said defendants in and to said premises or any portion thereof which shall have been sold as aforesaid.

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138 —8—

It Is Further Ordered, Adjudged and Decreed that upon the execution and delivery of such conveyance as aforesaid, the said purchaser or purchasers shall be let into possession of the above premises or such portion thereof so conveyed to them as aforesaid and that any of the parties to this cause, who may be in possession of said premises or any person claiming thru or under such defendants, who, since the com-

mencement of this action, has come into possession thereof, shall upon the production of such Master's deed or conveyance, and a certified copy of the order of this court confirming the report of such sale, shall surrender possession thereof to such purchaser or purchasers, his or their heirs, successors, administrators or assigns and that in default of their so doing, that a writ of assistance issue out of this court.

It Is Further Ordered, Adjudged and Decreed that said Master in Chancery report his proceedings to the court at as early a date as is practicable and that this cause stand continued for the purpose of such report and such further proceedings in connection therewith as may be necessary and proper for the purpose of carrying this decree into effect.

Enter:

D. J. NORMOYLE,
Judge.

Examined and approved.

ISIDORE BROWN,
Master in Chancery.

1568—163

139 State of Illinois, } ss.
County of Cook }

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree had and entered of record on the 10th day of July, A. D. 1931 in a certain cause lately pending in said Court, on the Chancery side thereof, between H. F. Newstedt Heating Co. and 4136 Wilcox Building Corp., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 10th day of October, 1935.

JOHN E. CONROY,
Clerk.

(Seal)

140 (Endorsed): Gen'l No. B207163 Circuit Court of Cook County Newstedt Heating Co. *vs.* 4136 Wilcox Bldg. Corp.

141 EXHIBIT NO. CHI. T. & T. CO. EX. 4.

RULING RESERVED.

Filed Oct. 30, 1935, Charles A. McDonald,
Master in Chancery.

UNITED STATES OF AMERICA

State of Illinois, } ss.
County of Cook. }

Pleas, before the Honorable Caverly, one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and holden at Chicago, in the Court House in said County and State, on the third Monday, (being the 17th day) of August in the year of Our Lord one thousand nine hundred and 31 and of the Independence of the United States the one hundred and 55.

Present, Honorable Caverley one of the Judges of the Circuit Court of Cook County, State of Illinois.

John A. Swanson, State's Attorney.

William D. Meyering, Sheriff.

Attest:

THOMAS D. WALLACE,
Clerk.

Be It Remembered, that at the term aforesaid, to-wit: On the 21st day of August, A. D. 1931, the following among other proceedings were had and entered of record in said Court, to-wit:

142 State of Illinois, } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Aug. 21, 1931.

Judge John R. Caverly.

H. F. Newstedt Heating Co., a corporation,
vs.
4131 Wilcox Building Corporation, *et al.* } No. B-207163

On motion of E. C. Howard, Solicitor for Complainant, to approve and confirm the Master's Report of sale and distribution, filed herein, and it appearing to the Court that the Master in Chancery has in all things conformed to the law and the order of this Court, in conducting the foreclosure sale herein, and in distributing the proceeds derived from said sale, it is, therefore, Ordered that the said Master's Report of Sale and Distribution, be and the same is hereby approved and confirmed.

JOHN R. CAVERLY,
Judge.

143 State of Illinois, } ss.
County of Cook. }

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Order had and entered of record on the 21st day of August, A. D. 1931 in a certain cause lately pending in said Court, on the Chancery side thereof, between H. F. Newstedt Heating Co. and 4131 Wilcox Bldg. Corp., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 10th day of October, 1935.

JOHN E. CONROY,
(Seal) *Clerk.*

144 Gen'l No. B 207163. Circuit Court of Cook County.
H. F. Newstedt Co. *vs.* 4131 Wilcox Bldg. Corp.

145 CHICAGO TITLE & TRUST COMPANY EXHIBIT 5.

Filed Oct 30 1935 Charles A. McDonald, Master in Chancery.

State of Illinois, } ss.
County of Cook. }

I, Edward J. Kaindl, Recorder of Deeds, and Keeper of the Records of said Recorder of Deeds, in and for said County, in the State aforesaid, Do Hereby Certify, that the following is a true and correct photographic copy of the record of a certain Instrument filed in said Office the Tenth day of August A. D. 1931 as Document No. 10951481 and recorded in Book 29414 of Records, at Page 508.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Chicago, this Ninth day of October A. D. 1935.

EDWARD J. KAINDL,
Recorder of Deeds.

(Seal)

146 Master's Certificate of Sale

Book 29414 Page 508

State of Illinois, } ss.
County of Cook. }

IN THE CIRCUIT COURT OF COOK COUNTY

In Chancery

H. F. Newstedt Heating Company, a corporation
vs.
4136 Wilcox Building Corporation, a corporation, *et al.* } General No. B 207163

I, Isidore Brown, Master in Chancery of the said Circuit Court of Cook County, Do Hereby Certify, that in pursuance of a decree entered on the 10th day of July A. D. 1931 by the said Court in the above entitled cause, I duly advertised according to law the premises hereinafter described, to be sold at public vendue, to the highest and best bidder for cash at the

hour of one o'clock in the afternoon, (daylight saving time) on Wednesday the 5th day of August A. D. 1931 at the Judicial Salesrooms of the Chicago Real Estate Board, Number 57 West Monroe Street, Chicago, in said Cook County; That at the time and place so aforesaid appointed for said sale, I attended to make the same and offered and exposed said premises for sale at public vendue, to the highest and best bidder for cash. Whereupon H. F. Newstedt Heating Company, a corporation, and Morton Manufacturing Company, a corporation, offered and bid therefor the sum of Eight Hundred Eighty-one Dollars Ninety-one Cents 881.91; and that being the highest and best bid offered therefor, I accordingly struck off and sold to said bidder, for said sum of money, the said premises which are situated in the County of Cook and State of Illinois, and are described as follows, to-wit: Lots Thirty Four (34) and Thirty Five (35) in Block Three (3) in W. M. Derby's Subdivision of the North East Quarter of the North East Quarter of Section Fifteen (15), Township Thirty Nine (39) North, Range Thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois, and commonly known as 4136 Wilcox Avenue, Chicago, Illinois, in the following proportions:

H. F. Newstedt Heating Company, a corp.... 74.1%
Morton Manufacturing Company, a corp.... 25.9%

And I Do further Certify, that the said H. F. Newstedt Heating Company, a corp., and Morton Manufacturing Company, a corp., their legal representives or assigns, will be entitled to a deed of said premises on the 6th day of November A. D. 1932, unless the same be redeemed according to law.

Witness my hand and seal this 5th day of August A. D. 1931.

ISIDORE BROWN, (Seal)
Master of Chancery of the Circuit Court of Cook County

147 Book 29414 Page 509

Assignment

For Value Received ..... hereby sell, assign and transfer unto ..... all of ..... right, title and interest in and to the within Master's Certificate and the real estate and premises therein described.

Witness ..... hand..... and seal..... this ..... day of ..... A. D. 19....

.....(Seal)
.....(Seal)
.....(Seal)

Box 37

Isidore Brown
Master in Chancery.
to
H F. Newstedt Heating Co. and Morton Manufacturing Co.

Duplicate

Master's Certificate of Sale

County of Cook, } ss. No. .....
State of Illinois. }

This Instrument was filed for record in the Recorder's Office of ..... Cook County aforesaid on the ..... day of ..... A. D. 19.... at ..... o'clock ....M. and recorded in Book ..... of ..... on page .....

.....
Recorder.

Isidore Brown
Suite 1814
One La Salle Street
Chicago
10951481

State of Illinois } ss. No.
Cook County }

Filed for Record
1931 Aug 10 AM 9 39
And Recorded in Book Page
Recorder
Clayton F. Smith

148 Wherefore, the Chicago Title and Trust Company, a corporation, as successor trustee, appellant, prays that the above statement of evidence be settled, approved and allowed by the court as a true, full, correct and complete statement of all of the evidence taken and given before Charles A. McDonald, special master of this court, and reported to the court, and heard and considered by the court on the hearing thereof, for the use on the appeal taken on the 4th of February, 1936, to the United States Circuit Court of Appeals for the Seventh Circuit.

WINSTON, STRAWN & SHAW,
Attorneys for the Chicago Title and Trust Company, a corporation, as Successor Trustee.

149 Certificate of Judge.

rtificate of Judge.

The foregoing statement of evidence is, in all respects, hereby approved and settled as a true and complete statement of the evidence adduced before, and reported by, Charles A. McDonald, special master in chancery of this court to whom this cause had been referred, and all of the evidence adduced, heard and considered on the hearing and trial by the court of the above entitled cause, and at the suggestion of attorneys for Forty-One Thirty-Six Wilcox Building Corporation,

It is Ordered that those parts thereof in question and answer form be so embodied in said statement of evidence in the exact words of the witness Fay Fischel; and said statement of evidence is Ordered filed and included in the record for the purpose of the appeal.

JOHN P. BARNES,
U. S. District Court Judge.

Dated February 26th, 1936.

150 (Endorsed): In the District Court of the United States * * (Caption—60278) * * Statement of Evidence Under Equity Rule 75. Lodged—Feb 19-1936 Henry W. Freeman, Clerk. Filed Feb. 26 1936 Henry W. Freeman, Clerk.

151 And on, to wit, the 19th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit: Filed Feb. 1 1936.

152 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

NOTICE.

To: Messrs. Karlin & Kohen, 11 South LaSalle St., Chicago, Ill. Joseph Z. Willner, Suite 751-10 So. LaSalle St., Chicago.

Please Take Notice that on Wednesday the 19th day of February, A. D. 1935, we will lodge with the Clerk of the U. S. District Court for the Northern District of Illinois, Eastern Division, at his office in the Federal Building, Chicago, Illinois, a statement of the evidence adduced at the hearings of the above entitled cause under Equity Rule 75, and that we will apply to his Honor, John P. Barnes, one of the judges of said court, for the settlement and approval of the Statement of Evidence as a true, complete and properly prepared statement in that behalf and to become a part of the record therein on Friday the 21st day of February, A. D. 1936, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, in the room usually occupied by him as a court room in the Federal Building, Chicago, Illinois, or in his absence before such other judge as may be sitting in his place and stead; at which time and place you may appear if you see fit.

WINSTON, STRAWN & SHAW,
Attorneys for Chicago Title and Trust Company, a corpn., as Successor Trustee.

Received a copy of the above and foregoing notice, together with a copy of the Statement of Evidence therein referred to, this 19th day of February, A. D. 1936.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for 4136 Wilcox Building Corporation.

Dec. 17, 35.

25 And on, to wit, the 17th day of December, 1935, came the Special Master and filed in the Clerk's office of said Court a certain Master's Report in words and figures following, to wit:

26 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

MASTER'S REPORT ON GOOD FAITH AND PETITION AND MOTION TO DISMISS.

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The undersigned, Charles A. McDonald, one of the Masters in Chancery of the United States District Court for the Northern District of Illinois, Eastern Division, to whom as such Master in Chancery, the above entitled cause was heretofore by Order of Court, referred (1) to examine the petition filed herein and the answer thereto, and (2) to take testimony thereon and to determine whether or not said petition is in proper form and (3) to determine whether or not said petition was filed in good faith, and (4) to pass upon the question as to whether said petition should be dismissed in accordance with the motion of Chicago Title & Trust Company, as successor Trustee, respectfully reports as follows:

27 1. That he was attended in his office by attorneys for the Debtor Corporation and for the Trustee and by various parties in interest herein; that a transcript of the testimony and exhibits offered and received at the hearings herein is attached hereto and made a part hereof.

2. That on June 13, 1935, Forty-One Thirty-Six Wilcox Building Corporation, an alleged corporation, filed its petition herein, praying inter alia for an Order approving said petition as properly filed under Section 77-B of the Bankruptcy act and asking that it be granted all other and further relief to which it may be entitled.

3. That thereafter, Chicago Title & Trust Company, a Corporation, as successor Trustee under Trust Deed recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10325493, given to secure the payment of certain bonds and covering the property described in the Debtor's petition,

filed its answer setting up various matters as grounds for the dismissal of said petition and denying that said petition filed herein by the Debtor was filed in good faith or was properly filed.

28 4. It appears from the pleadings and the proofs herein, that the principal asset of the Debtor is the land and apartment hotel building known as the Wilcox Apartments, located at 4136 West Wilcox Street, in Chicago, Illinois, consisting of a three-story, Corridor type, apartment hotel building containing 35 apartments, together with furniture, fixtures and equipment therein contained. Said real estate being more specifically described as follows:

"Lots thirty-four (34) and thirty-five (35), in Block Three (3) in W. M. Darby's Subdivision of the North East Quarter (N. E. ¼), of the North East Quarter (N. E. ¼), of Section Fifteen (15), Township Thirty-Nine (39) North, Range Thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois."

5. That said property was conveyed to the Madison and Kedzie State Bank for the purpose of securing an indebtedness of Ninety-Five Thousand Dollars ($95,000.00) by Trust Deed, which Trust Deed was recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 10325493, that the Chicago Title & Trust Company was named as Successor Trustee in said Trust Deed and is now acting as such.

29 6. That said property is also subject to the encumbrance of a Trust Deed to the Chicago Title & Trust Company, as Trustee, to secure a junior mortgage indebtedness in the sum of Fifteen Thousand Dollars ($15,000.00), dated November 26, 1929, and recorded in the Recorder's Office of Cook County, Illinois, as Document No. 10565961.

7. That on or about November 10, 1931, M. M. Hein filed a Bill in the Superior Court of Cook County, Illinois, Case No. 546629 entitled M. M. Hein *vs.* One Thirty-Six Wilcox Building Corporation, et al, wherein it was sought to foreclose the lien of said junior mortgage Trust Deed above described as Document No. 10565961, which bill is still pending and undisposed of.

8. That the Metropolitan Trust Company was appointed as Receiver under and by virtue of said Bill to take possession of all of the assets and of the property of the Debtor and that said Receiver is still in full possession, control and charge of all of said property.

9. That thereafter there was filed in the Superior Court of Cook County, case entitled Madison & Kedzie State Bank *vs.* Max Gurevitz, *et al.*, Superior Court No. 547687, to foreclose the lien of the first mortgage Trust Deed hereinabove described, as Document No. 10325493, which bill is still pending and undisposed of.

10. It also appears that a certain Mechanic's Lien suit was filed against the Debtor Corporation by H. F. Neustedt Heating Company, a Corporation, in the Circuit Court of Cook County, entitled H. F. Neustedt & Company, a Corporation *vs.* Forty-One Thirty-Six Wilcox Building Corporation, *et al.*, case No. B-207163. That in said proceeding a decree was entered, a sale was had and a Master's Certificate issued, which said Master's Certificate was issued by Master in Chancery, Isidore Brown, dated August 5, 1931. That no deed ever issued through, or under said Master's Certificate and that said Master's Certificate was purchased and now is the property of the Debtor.

11. It also appears that on May 4, 1931, a decree was entered in the Superior Court of Cook County, Illinois, in the case of People of the State of Illinois, ex rel Oscar E. Carlstrom, attorney general, *vs.* Forty-One Thirty-Six Wilcox Building Corporation, Case No. 53735 in and by which decree it was ordered, adjudged, and decreed that the defendant corporation, Forty-One Thirty-Six Wilcox Building Corporation be and the same is hereby dissolved.

12. It further appears from the evidence that the Debtor Corporation was organized under the Laws of the State of Illinois, on April 10, 1929; that it was authorized to issue fifty shares of common stock having a par value of $100.00 each, all of which stock was issued and is still outstanding.

13. On the question of whether or not the Debtor Corporation having been dissolved by decree of court more than two years prior to the filing of its petition under Section 77-B of the Bankruptcy Act, can now avail itself of said Act, the Master finds that the Statutory right given to a dissolved Illinois Corporation to prosecute or defend suits at law or in equity brought by or against the corporation at any time within two years from the date of the Decree of Dissolution includes the right of such corporation to thereafter prosecute or defend such an action begun at any time within said period to its ultimate termination regardless of the time required to litigate the cause.

32 14. The statutory two year period has reference to the commencement and the defense of an action and not to the termination thereof, otherwise the right conferred by the statute upon a dissolved corporation could not be availed of if the corporation were held to be civilly dead for all purposes at the expiration of two years from the date of the entry of the decree of dissolution.

15. The Debtor corporation is still a party to the undisposed of litigation in the two foreclosure proceedings pending in the State Courts notwithstanding the fact that the decree dissolving the corporation was entered May 4, 1931, or more than four (4) years ago and in litigating these proceedings in the State Court, the Debtor Corporation must be regarded as a corporation de-jure possessing property rights enuring to the benefit of the creditors and stockholders which a Court with Equity powers will fully protect and administer, until the litigation is disposed of completely.

16. The parties to these proceedings have apparently recognized this right of the Debtor Company to continue to litigate the questions therein involved and no objection
33 thereto has been interposed in the State Court proceedings and it was stipulated in the Record (November 13, 1935, Page 27) that Edward Halligan is attorney of record for the Forty-One Thirty-Six Wilcox Building Corporation, in the case entitled Chicago Title & Trust Company, a Corporation *vs.* Max Gurevitz, Superior Court, Case No. 547687, and that such attorney has been receiving from the Receiver the property reports and accounts which reports and accounts have been checked by said attorney for the Corporation. (See Petitioners Exhibit #1).

17. The Corporation having a legal existence for the purpose of defending said suits and for the purpose of defending its assets and property rights in the litigation in question, it follows that its Board of Directors are empowered to take such action to protect the assets and property rights of the company in the litigation as will best serve the interests of the creditors and stockholders and hence, the Board of Directors of the Corporation might rightfully pass a resolution authorizing the filing of a petition herein which action is in effect the transferring of the litigation pending in the State Courts to the Federal Court in Bankruptcy for adjudication.

34 18. The Bankruptcy Act under Section 77-B thereof, confers paramount and exclusive jurisdiction upon

the Federal Court over the Debtor Corporation seeking relief thereunder and its property wherever situated, and this Act affords additional relief to insolvent corporations, which supersedes and stays a pending State Court action wherever availed of in good faith.

19. On the question of good faith of the Debtor Corporation, in filing its petition herein, it appears from the testimony of Mrs. Fay Fischel, that all of the stock of the Corporation is owned by herself, her father Mr. Hyman Schulman and her brother Mr. Sam Schulman. That the same three persons are the Directors of the Corporation, that they had an informal meeting in which the filing of the petition herein was discussed and that she, as President of the Company, was authorized to file the petition under Section 77-B of the Bankruptcy Act for Reorganization of the property. Joseph J. Karlin, Attorney for the Debtor has also testified to the above facts (Page 24 Record of November 13, 1935).

20. That although there was some irregularity in the meeting of the stockholders and directors of the corporation
35 at which the alleged resolution was passed, authorizing the filing of the petition and that the minutes of said meeting were not properly reduced to writing, the Master is still of the opinion that such resolution was sufficient to authorize the filing of this petition.

21. That under Section 77-B of the Bankruptcy Act, the successor Trustee in the Trust Deed being foreclosed on the Debtor's property in the State Court, is not a "creditor" within the meaning of the Bankruptcy Act and therefore cannot be heard on the question of good faith of the Debtor Company in filing its petition herein.

22. Some testimony was offered herein to the effect that the owner of approximately Forty Thousand Dollars ($40,000.00) of the first mortgage bonds out of a total of Ninety-five Thousand Dollars ($95,000.00) had opposed the entry of a decree in the foreclosure proceeding in the State Court and that therefore there is no probability of a Reorganization being worked out in the State Court proceeding, but the Master does not consider it necessary to make a finding at this time as to the probability of a feasible Plan being submitted in this proceeding.

36 23. Until a Plan of Reorganization has been promulgated and submitted for approval, the question of its feasibility or fairness cannot be determined nor can it be said in advance that the proposed Plan will be rejected. Section

77-B of the Bankruptcy Act contemplates that the Debtor Corporation be afforded the opportunity of presenting a proposed Plan of Reorganization for approval or disapproval and if the Plan is not adopted, the act expressly provides for the procedure to be followed thereafter.

The Master, therefore, recommends:

(1) That an Order be entered finding that the Debtor Company's Petition filed herein contains the requisite jurisdictional allegations and that said petition was filed in good faith.

(2) That this Court has jurisdiction paramount and exclusive over the Debtor Corporation and its property.

(3) That the proceedings pending in the State Courts hereinabove referred to be stayed until the further Order of this Court.

(4) That the Debtor Corporation or its attorneys herein be directed to be a proposed Plan of Reorganization
37 herein within a reasonable time to be fixed by the Court,

Respectfully submitted:

CHARLES A. MCDONALD
Suite 3600—135 So. La Salle St.
Chicago, Ill.—Central 8386
Master in Chancery.

Dated: December 9, 1935.

38 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

MASTER'S CERTIFICATE OF SERVICE,

I, Charles A. McDonald, a Master in Chancery, of the United States District Court, for the Northern District of Illinois, Eastern Division, do hereby certify that I rendered services in the above entitled cause as follows:

Procured the files;

Examined petition and pleadings therein;

Held several hearings on the Petition of Good Faith and Motion to Dismiss said Petition;

Prepared and filed herewith my Master's Report on said Petition and Motion.

In my opinion a fair and reasonable fee for my services rendered in this matter to date, would be the sum of Two Hundred Fifty Dollars ($250.00), of which $100.00 has been de-

posited. I, therefore, respectfully request that I be allowed the additional sum of $150.00.

Respectfully submitted:

CHARLES A. MCDONALD
Suite 3600—135 So. La Salle St.
Chicago, Ill.—Central 8386
Master in Chancery.

Dated: December 9, 1935.

ed Jan. 7, 6.

39 And afterwards, to wit, on the 7th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

40 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Tuesday, January 7, 1936.

Present: Honorable John P. Barnes, Judge of said Court.

On motion of solicitors for Chicago Title & Trust Company
It Is Ordered that leave be and the same is hereby given to file instanter Exceptions to the Report of Special Master McDonald and
It Is Ordered that the hearing on the Master's Report and the Exception thereto be and the same is hereby set for hearing January 13, A. D. 1936.

41 And on, to wit, the 7th day of January, 1936 came the Chicago Title & Trust Company by its attorneys and filed in the Clerk's office of said Court certain Exceptions in words and figures following, to wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan 1936.

* * (Caption—60278) * *

EXCEPTIONS OF CHICAGO TITLE AND TRUST COMPANY, A CORPORATION, AS SUCCESSOR TRUSTEE, TO THE REPORT OF CHARLES A. McDONALD, ONE OF THE MASTERS IN CHANCERY OF SAID COURT, ON THE PETITIONS OF THE ALLEGED DEBTOR HEREIN AND THE ANSWER THERETO OF SAID CHICAGO TITLE AND TRUST COMPANY, AS SUCCESSOR TRUSTEE.

Now comes Chicago Title and Trust Company, a corporation as Successor Trustee under the trust deed made by Max Gurevitz, a Bachelor, to Madison & Kedzie State Bank, a corporation, dated March 20, 1929 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on April 1, 1929 in Book 26737 of Records, at Page 85, as Document No. 10325493, and excepts to the report of Charles A. McDonald, Master in Chancery, dated December 9, 1935, in the following respects:

(1) Said Master has erred in not finding that under the laws of the State of Illinois, the Forty-one Thirty-six Wilcox Building Corporation became and was dissolved prior to the filing of the petition herein and ceased to have a juridical existence for the purpose of filing said petition;

43 (2) Said Master has erred in finding that said Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the Master's Certificate of Sale issued pursuant to the decree entered in case No. B-207163 in the Circuit Court of Cook County, Illinois, redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring ownership of said Certificate of Sale or of said premises;

(3) The findings of fact and conclusions of law made and reached by said Master are a denial of full faith and credit by this court to the public acts and to the judicial records and proceedings of the courts of the State of Illinois;

(4) Said Master has erred in concluding that the filing of the petition herein by the alleged Debtor is a continuation of the foreclosure proceedings brought by this objector in the Circuit Court of Cook County, Illinois;

(5) Said Master has erred in finding that said petition was properly filed;

(6) Said Master erred in finding that said petition was filed in good faith;

(7) Said Master erred in finding that this objector is not a creditor within the meaning of the Bankruptcy Act as amended and in refusing to permit this objector to question the good faith of the alleged Debtor in filing its petition herein;

Said Master erred in his findings of fact and conclusions of law in the respects hereinabove enumerated, in all of which respects this objector excepts to the report of said master and submits that the same should be altered and that said
44 petition of the alleged debtor herein be dismissed.

Respectfully submitted,

CHICAGO TITLE AND TRUST COMPANY, a corporation, as Successor Trustee,
By WINSTON, STRAWN & SHAW and
By A. EDMUND PETERSON
Its Attorneys.

1 Jan. 1936.

45 And afterwards, to wit, on the 13th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER.

This cause coming on to be heard upon the motion of Karlin and Cohen, attorneys for the debtor corporation and the Court being fully advised in the premises

Be It, and It Is, Therefore, Ordered:

That leave be and is hereby given to Joseph Z. Willner to enter his appearance as joint counsel with Karlin and Cohen as attorneys for the debtor corporation herein.

Enter:

BARNES
Judge.

Dated January 13, 1936.

47 And afterwards, to wit, on the 14th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears that following entry, to wit: Entered Jan 14, 1936.

48 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

At Chicago, for the Northern District of Illinois, before his Honor, Judge John P. Barnes, this 14th day of January, A. D. 1936.

This cause coming on to be heard upon the Master's Report, on the petition of the Forty-One Thirty-Six Wilcox Building Corporation, a corporation, heretofore filed on the 13th day of June, A. D. 1935, and the answers filed thereto, pursuant to Section 77-B, Chapter 8, of the Acts of Congress relating to Bankruptcy, and upon the motion of the Debtor to have said petition approved as having been properly filed, due and proper notice having been given to all parties entitled thereto, and the Court having duly considered said Master's Report, concerning the facts, and his conclusions therein, and the Court having heard the arguments of counsel, and being duly apprised in the matter,

Does Hereby Order, Adjudge and Decree:

1. That the Report of said Master, the Honorable Charles A. McDonald, be and the same is hereby confirmed and approved, and all objections and exceptions filed thereto are hereby overruled.

2. That the petition of the Debtor filed herein, under Section 77-B, of Chapter 8, of the Acts of Congress, relating to Bankruptcy, be and the same is hereby approved, as being properly filed and in good faith.

49 3. And this cause further coming on to be heard upon motion of Debtor for the appointment of a Temporary Trustee for the said Debtor and its property, and it appearing to the Court that due and proper notice of the presentation of said motion has been made upon all parties in interest herein,

It Is Ordered, Adjudged and Decreed that a Temporary Trustee should be appointed for said Debtor and its property, and

It Is Further Ordered that the parties hereto forthwith

proceed before the Honorable Philip L. Sullivan, one of the Judges of this Court to whom this case is regularly assigned, and take up with him the question as to whom shall be appointed Temporary Trustee.

JOHN P. BARNES

ered Jan. 1, 1936.

50 And afterwards, to wit, on the 14th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit:

51 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

Tuesday, January 14, 1936.

Present: Honorable Philip L. Sullivan, Judge of said Court.

On motion of solicitor for the debtor corporation

It Is Ordered that Arthur P. Murphy, 3255 W. Madison Street, Chicago, Illinois, be and he is hereby appointed Temporary Trustee for the property described in the Debtor's petition upon filing a bond herein in the penal sum of Four Thousand ($4,000.00) Dollars.

d Jan. 1936.

52 And afterwards, to wit, on the 15th day of January, 1936, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

53 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER APPOINTING TEMPORARY TRUSTEE UNDER SECTION 77-B OF THE BANKRUPTCY ACT.

At Chicago, for the Northern District of Illinois, before His Honor Judge John P. Barnes, this 15th day of January, A. D. 1936.

This cause coming on to be heard upon the motion of Debtor

for the approval of its petition as having been properly filed under Section 77-B of the Bankruptcy Act, and for the appointment of Temporary Trustee, pursuant to said Section 77-B of the Bankruptcy Act, due and proper notice having been first given to all parties entitled thereto, and the Court having jurisdiction of the parties and the subject matter herein, and being duly apprised in the matter, and the Court having heretofore, on to-wit: the 14 day of January, A. D.
54 1936, appointed A. P. Murphy as Temporary Trustee herein, and having heretofore approved and confirmed the petition of Debtor as having been properly filed and in good faith;

The Court Does Hereby Further Order, Adjudge and Decree:

1. That all persons, firms and corporations yield up and deliver to said Trustee the possession of said premises.

2. That the Temporary Trustee be and he is hereby required to give notice to creditors and stockholders of said Debtor, of a hearing before this Court, to be held on February 11th, 1936, at ten o'clock in the forenoon, in the Federal Building, Chicago, Illinois, before His Honor Judge Philip L. Sullivan, in the Courtroom usually occupied by him, at which hearing, or any adjournment thereof, the Court may make this Order, appointing said Trustee, permanent, may appoint another Trustee or Trustees, or appoint the Debtor to continue in possession of said Debtor's property, or make and enter such further and other Order or Orders, amplifying, extending, limiting or otherwise modifying this Order, as it may seem proper, and such notice to be given by mailing, postage, prepaid, a notice to each creditor and stockholder known to him at his post office address, as it appears on the books of the Debtor, on or before the 3 day of February, A. D. 1936, and by publishing once a week, for two successive weeks, a copy thereof, in a newspaper of general circulation in the City of Chicago, County of Cook and State of Illinois, the last publication thereof to be at least three days before the 11th day of February, A. D. 1936. Such notice may be in or substantially the following form:

55 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.	In proceedings for Reorganization of said corporation under Section 77A and 77B, of the Bankruptcy Act of 1898, as amended and supplemented. No. 60278.

NOTICE.

To all creditors and stockholders of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, under Sections 77A and 77B of the Bankruptcy Act, has been filed in the District Court of the United States, for the Northern District of Illinois, Eastern Division, and that by an Order of said Court entered on the 14th day of January, A. D. 1936, said petition was approved as properly filed, and A. P. Murphy was appointed Temporary Trustee of the Debtor's Estate.

You are further notified, in accordance with said Order, that a hearing will be held on February 11th, 1936, at ten o'clock, before His Honor, Judge Phillip L. Sullivan, in the Courtroom in the United States Court House in Chicago, Illinois, usually occupied by him, or in his absence, before any Judge in said Court who may be hearing this matter, at which hearing, or any adjournment thereof, the Court will determine whether or not it will make the Order appointing A. P. Murphy, as Trustee, permanent, or will terminate such appointment and restore the Debtor to possession, or shall appoint an additional Trustee or Trustee, and will enter such order or orders as may seem pertinent.

Creditors and stockholders may attend this meeting, and all meetings, but are not required to do so.

A. P. MURPHY
Temporary Trustee of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

4. That said temporary trustee file, within fifteen (15) days from the date hereof, schedules of the property of said Debtor, in amount and kind thereof, and the location thereof, the value in money of the said property, and a list of the creditors of the said Debtor, showing their residences,
56 if known, and if unknown, that fact to be stated, the amount due each of them, the consideration therefor, and the security held by them, if any.

5. That this Court take full jurisdiction over the Debtor and all of the affairs of the said Debtor, with full reservation to enter any and all orders necessary for the proper preservation and administration of the Estate.

6. That under the further Order of this Court, all creditors, bondholders, stockholders, note holders and trustees and other persons claiming or acting by, through or under them, and other officers, agents, attorneys, representatives, servants and employees, are hereby enjoined and restrained from instituting or prosecuting any action at Law, or suit or proceeding in equity against the Debtor in any Court of Law or Equity.

7. The Court hereby determines that sixty (60) days from the date of the entry of this Order is a reasonable time within which claims and interests of creditors and stockholders may be filed; that all such claims and interests shall be filed with the Honorable Charles A. McDonald, Master, in writing, either by delivering the same to him in person, or mailing same to his office, located at 125 S. La Salle St., Chicago, Illinois; and the Trustee is hereby directed to forthwith send notices to all of the creditors, stockholders and other claimants of the Debtor, stating such fact, and it is hereby ordered and notice of the Trustee shall so state, that no claim or interest may thereafter participate, excepting on Order for cause shown, and such claims, when filed, shall be verified and itemized, and shall set out the amount and details of the claim.

8. That the Debtor shall prepare and submit a Plan of Reorganization of its Estate, and shall file same within thirty (30) days from the date hereof, and for the purpose of the Plan and its acceptance, shall divide its creditors and
57 stockholders into classes, according to their respective claims and interests, and may, for the purpose of such classification, recommend to the Court that portions of secured claims shall be classified as unsecured claims.

9. That the Debtor shall, when Plan is submitted to the

Court, as soon thereafter as possible, set forth what creditors or classes thereof are unaffected by said Plan, and send notices to the parties in interest at least ten (10) days before the hearing to be held to determine the issues raised, said hearing to be held at least thirty (30) days before the date set for final confirmation.

10. That the Court hereby orders that ninety (90) days is a reasonable time for the acceptance of the Plan, and that Debtor shall, at the time it proposes to file its written consents to said Plan, give notice at least ten (10) days before the date set for hearing on the confirmation of said Plan. If the Debtor has not secured the consents necessary, as provided by the provisions of this Act, before said time, application may be made to the Court for an extension, which, upon proper showing of the difficulties involved and the diligence of the Debtor, may be granted for a reasonable period.

11. If a Plan of Reorganization is not proposed or accepted within such time as fixed by Order of this Court, these proceedings shall be ordered dismissed or the Court may then set this cause for a hearing on the question of insolvency, and in a case of insolvency determine whether it shall direct the liquidation of this Estate. This Court reserves jurisdiction to make appropriate Orders consistent with the provisions of Section 77-B, for the protection of obligations incurred by Debtor while acting under this Order, and for the payment of administrative expenses and allowances in the proceedings herein, and for the protection of the depositary named herein in the payment of checks drawn upon it pursuant to this order.

58

12. That the Trustee may pay out of the funds of the Estate all moneys necessary to carry out the provisions of this Order, including all necessary costs that may be incurred by the Debtor in carrying out the provisions of this Order.

13. That the Trustees, under the Trust Indentures given to secure the First and Second Mortgage against the Estate of the Debtor, are authorized to file claims in this cause, in the manner as herein provided, not only in behalf of said Trustees individually but also on behalf of all of the holders of bonds and interest coupons pertaining thereto, issued and outstanding under said Trust Indentures. Every claim in respect to any bond, note or interest coupons, hereinafter filed in this cause by the owner or holder thereof, or by his authorized agent, shall, when such claim is approved and

allowed, reduce pro tanto any claim filed herein by said Trustees under said Trust Indentures.

14. It shall not be necessary, for the purpose of proving any claim filed by said Trustees, under said Trust Indentures, to produce the bonds, notes or interest coupons to which such claims relate, but proof of the amount of bonds, notes and interest coupons, outstanding under such Trust Indentures and remaining unpaid, may be made by other competent evidence.

Enter:

BARNES
Judge.

Dated at Chicago, Illinois, this 15th day of January, A. D. 1936.

59 And on, to wit, the 4th day of February, 1936 came the Chicago Title & Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit: Filed Feb. 1936.

60 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

NOTICE.

To: Karlin & Cohen, 11 S. LaSalle St.
Joseph Z. Willner, 751, 10 S. LaSalle St.

Please Take Notice that the Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, feeling aggrieved by the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession

of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, does hereby appeal from said orders to the United States Circuit Court of Appeals for the Seventh Circuit, for the reason stated in the assignment of errors accompanying this notice, and desiring to stay further proceedings herein, offers securities in the sum that said court may fix, and will pray, upon the approval thereof, that further proceedings be stayed pending the appeal.

You Are Further Notified that on Tuesday, the 4th day of February, 1936, we shall appear before his honor, Judge John P. Barnes, in the room usually occupied by him as a court room, in the Federal Building, Chicago, Illinois, and in his absence before any judge who may be sitting in his place and stead, and then and there present a petition for the allow-
61 ance of appeal and a stay of further proceedings, a copy of which petition is herewith served upon you; at which time and place you may appear if you see fit so to do.

WINSTON, STRAWN & SHAW
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

Received a copy of the above and foregoing notice, together with a copy of the assignment of errors and petition therein referred to, this 3rd day of February, 1936.

KARLIN & COHEN
JOSEPH Z. WILLNER

62 And on, to wit, the 4th day of February, 1936 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

63 IN THE DISTRICT COURT OF THE UNITED STATES Filed Feb. 1936.
* * (Caption—60278) * *

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States District Court, for the Northern District of Illinois, Eastern Division:

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the recorder of deeds of Cook County, Illinois, as document number 10325493, conceiving itself aggrieved by the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to
64 yield up and deliver to said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, does hereby appeal from such orders, and each of them, to the Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herein, and prays that this appeal may be allowed; that a citation be issued, directed to said Forty-one Thirty-six Building Corporation, commanding it to appear before the Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of record, proceedings and documents upon which said orders, and each of them, were made, be duly authenticated and sent to the Circuit Court of Appeals for the Seventh Circuit.

And the petitioner prays that the proper order touching the security to be required of it to perfect its appeal be made,

and the proper order touching the security be required of it to stay further proceedings herein be made, and prays that with the allowance of said appeal a supersedeas be issued by this honorable court.

CHICAGO TITLE AND TRUST COMPANY,
a corporation, as successor trustee,
By WINSTON, STRAWN & SHAW
Its Attorneys.

WINSTON, STRAWN & SHAW
Dated: Chicago, February 4th, 1936.

Feb. 4, 6. 65 And on, to wit, the 4th day of February, 1936 came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

66 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ASSIGNMENT OF ERRORS.

Now comes Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the recorder of deeds of Cook County, Illinois, as document number 10325493, and files the following assignment of errors upon which it will rely upon its appeal from the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession

67 of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Building Corpo-

ration in any court of law or equity, and says that this honorable court erred in the following respects:

1. In deciding that Forty-one Thirty-six Wilcox Building Corporation had juridical existence for the purpose of invoking the jurisdiction of this honorable court.

2. In deciding that Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the master's certificate of sale issued pursuant to the decree entered in case number B-207163, in the Circuit Court of Cook County, Illinois, or redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring the ownership of said certificate of sale or any interest in said premises by reason of such ownership of said certificate of sale.

3. In deciding that Forty-one Thirty-six Wilcox Building Corporation had, at the date of the filing of the petition herein, a property interest in the premises involved herein, and that such property interest was sufficient to warrant this honorable court in assuming jurisdiction over said premises.

4. In deciding that the recognition of the juridical existence of Forty-one Thirty-six Wilcox Building Corporation was not a denial of full faith and credit by this honorable court to the public acts and to the judicial records and proceedings of the courts of the state of Illinois.

68 5. In deciding that sections 74A and 74B of the Bankruptcy Act as amended are retroactive.

6. In deciding that the appointment of a temporary trustee for the premises involved herein, the possession of said premises by such temporary trustee, and the restraining of the foreclosure proceedings brought by the Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, do not constitute the taking of property of Chicago Title and Trust Company, as such successor trustee, without due process of law, contrary to the Federal Constitution and amendments thereto, and the Constitution of the State of Illinois.

7. In deciding that sections 74A and 74B of the Bankruptcy Act as amended, as construed by this honorable court, is not an unwarranted invasion of the rights reserved to the state of Illinois, contrary to Article X of the Amendments to the Federal Constitution.

8. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was properly filed.

9. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was filed in good faith.

10. In refusing to permit the Chicago Title and Trust Company, as such successor trustee, to question the good faith of Forty-one Thirty-six Wilcox Building Corporation in filing its petition herein.

11. In deciding that Chicago Title and Trust Company, a corporation, as such successor trustee, is not a creditor within the meaning of the Bankruptcy Act as amended.

Wherefore, in order that the foregoing assignment of
69 errors may be and appear of record in this cause, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, presents the same to this honorable court, and prays that such disposition may be made thereof as is in accordance with the law and statutes of the United States in such case made and provided, and Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, prays that said order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and each of them, be reversed, and that an order may be made and entered herein dismiss-
70 ing the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935.

CHICAGO TITLE AND TRUST COMPANY,
a corporation, as successor trustee.
By WINSTON, STRAWN & SHAW
Its Attorneys.

WINSTON, STRAWN & SHAW
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

71 And afterwards, to wit, on the 4th day of February, 1936, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit: Entered 1936.

72 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER ALLOWING APPEAL.

The petition of Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, from certain orders heretofore entered by this court, being now presented,

It Is Hereby Ordered that an appeal be allowed to the United States Circuit Court of Appeals for the Seventh Circuit, as prayed for, and that a certified copy of the transcript of the proceedings be transmitted, duly authenticated to said United States Circuit Court of Appeals for the Seventh Circuit in the manner provided by law.

It Is Further Ordered that a citation be issued admonishing said Forty-one Thirty-six Wilcox Building Corporation to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit on or before the 2nd day of March, 1936.

It Is Further Ordered that a bond for costs and damages be given by said Chicago Title and Trust Company,
73 a corporation, as successor trustee, on said appeal, and that the same be, and is hereby, fixed at the sum of $5,000.00, conditioned as provided by law.

It Is Further Ordered that on the filing of said bond that all further proceedings in this court be stayed until the further order of this court, and pending decision on appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

Enter:

BARNES
United States District Court Judge.

Dated: Chicago, February 4th, 1936.

b. 6, 74 And on, to wit, the 6th day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

75 Standard

Accident Insurance Company

Detroit, Michigan

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

BOND ON APPEAL.

Know All Men By These Presents, that we, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, as Principal, and Standard Accident Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, as Surety, are held and firmly bound unto the above named Forty-One Thirty-Six Wilcox Building Corporation, a corporation, in the sum of Five Thousand and No/100 Dollars ($5,000.00), for the payment of which well and truly to be made, we bind ourselves, our administrators, successors and assigns, jointly and severally and firmly by these presents.

Sealed with our seals and dated this 5th day of February, A. D. 1936.

Whereas, an order was entered in the above entitled proceedings in the District Court of the United States, for the Northern District of Illinois, Eastern Division, on the 4th day of February, 1936, allowing an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the order made and entered herein on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and the order made and entered herein on the 14th day of January, 1936, appointing one Arthur P. Murphy tem-

porary trustee, and the order made and entered on the
76 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity and each of said orders, wherein Forty-one Thirty-six Wilcox Building Corporation was petitioner and Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, was respondent;

Whereas, the said Arthur P. Murphy, Temporary Trustee, will remain in possession of said premises during the pendency of said appeal;

Whereas, in said order allowing said appeal it was required that appellant give a bond on appeal in the sum of Five Thousand Dollars ($5,000.00), and that on the filing of said bond all further proceedings in said court be stayed until the further order of said court, and pending decision on appeal to said United States Circuit Court of Appeals for the Seventh Circuit;

Now, Therefore, the condition of this obligation is such that if the above named Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as Document number 10325493, shall prosecute its appeal with effect and answer all damages and costs, if it fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor trustee, aforesaid
By (signed) E. C. HACKETT,
Its Vice-President.

(Chicago Title & Trust Company corporate seal)

OK
ABJ
OJS

STANDARD ACCIDENT INSURANCE COMPANY
By (signed) M. J. SCHEEMEACKER

(Standard Accident Insurance Co. Seal—May 29, 1884).

(Power of Attorney not copied).

red Feb. 6, 36. 77 And afterwards, to wit, on the 6th day of February, 1936, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

78 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

ORDER.

This cause having come on to be heard on the motion of Winston, Strawn & Shaw, attorneys for respondent, Chicago Title and Trust Company, a corporation, as successor trustee under trust deed recorded as document number 10325493, for the approval of its bond heretofore ordered to be filed herein, on its appeal allowed to the United States Circuit Court of Appeals, for the Seventh Circuit, and said bond having been presented to the court,

It Is Ordered, Adjudged and Decreed that said bond be, and the same is hereby, approved and ordered filed.

Enter:

BARNES,
United States District Judge.

Dated Chicago, February 6th, 1936.

b. 19; 79 And on, to wit, the 19th day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain PRAECIPE FOR RECORD in words and figures following, to wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60278) * *

To the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division:

Sir:

You will please prepare a transcript of the record to be transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit, in pursuance to the appeal heretofore taken in this case, and include therein the following:

1. Petition for corporate reorganization filed June 13, 1935.

2. Notice and petition of Forty-one Thirty-six Wilcox Building Corporation filed June 21, 1935.

3. Order entered June 21, 1935, giving leave to all parties to answer, and referring petition and answers thereto to Charles A. McDonald, as special master.

4. Answer of Chicago Title and Trust Company, as successor trustee, filed June 27, 1935.

5. Report of Charles A. McDonald, as special master, filed December 17, 1935.

6. Order of January 7, 1936, giving leave to Chicago Title and Trust Company to file exceptions to the report of Charles A. McDonald, special master, and setting a hearing on said report and exceptions.

81 7. Exceptions of Chicago Title and Trust Company, as successor trustee, to the report of Charles A. McDonald, special master.

8. Order of January 13, 1936, giving leave to Joseph Z. Willner to file appearance as joint counsel with Karlin & Kohen.

9. Order of January 14, 1936, approving and confirming the report of Charles A. McDonald, as special master and overruling the exceptions of Chicago Title and Trust Company, as successor trustee, thereto, approving the petition of Forty-one Thirty-six Wilcox Building Corporation as properly filed and filed in good faith, and ordering that a temporary trustee for the premises involved be appointed.

10. Order of January 14, 1936, appointing Arthur P. Murphy temporary trustee.

11. Order of January 15, 1936, directing all persons, firms and corporations, to yield up and deliver to Arthur P. Murphy, temporary trustee, possession of the premises involved, and enjoining and restraining all persons from instituting or prosecuting any actions at law or proceedings or suits in equity against the Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity.

12. Notice and petition of Chicago Title and Trust Company, as successor trustee, for the allowance of appeal, filed February 4, 1936.

13. Assignment of Errors filed February 4, 1936.

14. Order of February 4, 1936, allowing appeal to the Chicago Title and Trust Company, as successor trustee.

15. The appeal bond filed February 6, 1936.

16. Order of February 6, 1936, approving appeal bond.

17. Statement of evidence taken before Charles A. McDonald, as special master and the approval thereof by the judge.

18. Notice of the lodgment of the statement of evidence with the clerk of the District Court and motion for approval.
19. This praecipe for record containing stipulation of counsel.

WINSTON, STRAWN & SHAW,
Attorneys for Appellant Chicago Title and Trust Company, as Successor Trustee.

82 The foregoing praecipe for the transcript of record on appeal is hereby approved by Appellee, Forty-one Thirty-six Wilcox Building Corporation.

JOSEPH Z. WILLNER,
JOSEPH KARLIN,
Attorneys for Appellee, Forty-one Thirty-six Wilcox Building Corporation.

d Feb. 21, 936.

83 And on, to wit, the 21st day of February, 1936, came the Appellant by its attorneys and filed in the Clerk's office of said Court a certain ADDITIONAL PRAECIPE in words and figures following, to wit:

84 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60278) * *

To the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division,—Sir:

You will please include in the transcript of record to be transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit, in pursuance of the appeal heretofore taken in this case, in addition to the records heretofore directed to be prepared by you, the following:

1. Citation filed February 4, 1936.
2. Certificate of Clerk to the transcript of the record.
3. This additional Praecipe.

WINSTON, STRAWN & SHAW,
Attorneys for Appellant, Chicago Title and Trust Company, a Corporation, as Successor Trustee.
JOSEPH Z. WILLNER,
KARLIN & COHEN,
Attorneys for Appellee, Forty-one Thirty-six Wilcox Building Corporation, a Corporation.

Chicago, February ——, 1936.

85 Northern District of Illinois, } ss.
Eastern Division.

I, Henry W. Freeman, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled In the matter of Forty-one Thirty-six Wilcox Building Corporation, a corporation, No. 60278, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 2nd day of March, A. D. 1936.

HENRY W. FREEMAN,
Clerk.

(Seal)

IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—60278) * * *

United States of America, } ss.

The President of the United States To: Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

You Are Hereby Cited and Admonished to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at the Federal Building, in the city of Chicago, and state of Illinois, on or before March 2, 1936, pursuant to an appeal filed in the Clerk's office of the United States District Court, for the Northern District of Illinois, Eastern Division, wherein Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document number 10325493, is appellant, and you are appellee, to show cause, if any there be, why the orders, and each of them, in said appeal mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness, John P. Barnes, Judge of the District Court of

the United States, for the Northern District of Illinois, Eastern Division, this 4th day of February, A. D. 1936.

JOHN P. BARNES,
United States District Judge for the Northern District of Illinois, Eastern Division.

Service of the above, and receipt of a copy thereof, is hereby admitted, this 4 day of February, 1936.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for Forty-one Thirty-six Wilcox Building Corporation.

Endorsed: In the District Court of the United States * * (Caption—60278) * * Citation Filed Feb—4 1936 Henry W. Freeman Clerk. Winston, Strawn & Shaw Attorneys at Law Telephone Cen. 4363 First National Bank Building Chicago.

1 Feb. 13, '36. And afterwards, to wit: On the thirteenth day of February, 1936, the following Assignment of Errors was filed in the Office of the Clerk of the U. S. Circuit Court of Appeals:—

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

5765.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation a corporation, Debtor.	Proceedings for Corporate Reorganization. In the District Court of the United States for the Northern District of Illinois, Eastern Division. No. 60278.

ASSIGNMENT OF ERRORS.

Now comes Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded in the office of the Recorder of Deeds of Cook County, Illinois,

as Document No. 10325493, and files the following assignment of errors upon which it will rely upon the allowance of its appeal from the order made and entered by said District Court on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said report filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed and the order made and entered by said District Court on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and the order made and entered by said District Court on the 15th day of January, 1936, directing all persons, firms and corporations to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and says that said District Court erred in the following respects:

1. In deciding that Forty-one Thirty-six Wilcox Building Corporation had juridical existence for the purpose of invoking the jurisdiction of said District Court.

2. In deciding that Forty-one Thirty-six Wilcox Building Corporation was capable of purchasing, in its corporate capacity, the master's certificate of sale issued pursuant to the decree entered in case No. B-207163, in the Circuit Court of Cook County, Illinois, on redeeming the premises involved herein from the sale held pursuant to said decree, or otherwise acquiring the ownership of said certificate of sale or any interest in said premises by reason of such ownership of said certificate of sale.

3. In deciding that Forty-one Thirty-six Wilcox Building Corporation had, at the date of the filing of the petition herein, a property interest in the premises involved herein, and that such property interest was sufficient to warrant said District Court in assuming jurisdiction over said premises.

4. In deciding that its assumption of jurisdiction over the Forty-one Thirty-six Wilcox Building Corporation and of the premises involved was not a denial of full faith and

credit by said District Court to the public acts, records and judicial proceedings of the state of Illinois.

5. In deciding that sections 74A and 74B of the Bankruptcy Act, as amended, are retroactive.

6. In deciding that the appointment of a temporary trustee for the premises involved herein, the possession of said premises by such temporary trustee, and the restraining of the foreclosure proceedings brought by the Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, do not constitute the taking of property of Chicago Title and Trust Company, as such successor trustee, without due process of law, contrary to the Federal Constitution and amendments thereto, and the Constitution of the State of Illinois.

7. In deciding that sections 74 A and 74 B of the Bankruptcy Act as amended, as construed by this honorable court, is not an unwarranted invasion of the rights reserved to the state of Illinois, contrary to Article X of the Amendments to the Federal Constitution.

8. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was properly filed.

9. In deciding that the petition of Forty-one Thirty-six Wilcox Building Corporation was filed in good faith.

10. In refusing to permit the Chicago Title and Trust Company, as such successor trustee, to question the good faith of Forty-one Thirty-six Wilcox Building Corporation in filing its petition herein.

11. In deciding that Chicago Title and Trust Company, a corporation, as such successor trustee, is not a creditor within the meaning of the Bankruptcy Act as amended.

Wherefore, in order that the foregoing assignment of errors may be and appear of record in this cause, Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, presents the same, and prays that such disposition may be made thereof as is in accordance with the law and statutes of the United States in such case made and provided, and Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as document No. 10325493, prays that said order made and entered on the 14th day of January, 1936, which order confirmed the report of Charles A. McDonald, as special master, dated December 9, 1935, and overruled the exceptions to said re-

port filed January 7, 1936, and adjudged, among other things, that the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935, for corporate reorganization, was properly filed and filed in good faith, and that a trustee should be appointed, and said order made and entered on the 14th day of January, 1936, appointing one Arthur P. Murphy temporary trustee, and said order made and entered on the 15th day of January, 1936, directing all persons, firms and corporations, to yield up, and deliver to, said temporary trustee, possession of the premises involved herein, and enjoining and restraining, among others, the petitioner from instituting or prosecuting any action at law or proceeding or suit in equity against said Forty-one Thirty-six Wilcox Building Corporation in any court of law or equity, and each of them, be reversed, and that an order may be made and entered dismissing the petition of Forty-one Thirty-six Wilcox Building Corporation filed herein on June 13, 1935.

CHICAGO TITLE AND TRUST COMPANY, a corporation, as successor trustee,
By WINSTON, STRAWN & SHAW,
Its attorneys.

WINSTON, STRAWN & SHAW,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee.

And afterwards, to wit: On the eleventh day of March, 1936, the following further proceedings were had and entered of record, to wit:—

red Mar. 11, 36.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Wednesday, March 11, 1936.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.

(Caption No. 5765.)

It is ordered by the Court that the petition of Chicago Title and Trust Company, as Successor Trustee under the Trust Deed recorded as Document No. 10325493, for leave to appeal from the Orders or Decrees of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on January 14, 1936 and on January 15, 1936 be, and the same is hereby granted, and an appeal from said Orders or Decrees is hereby allowed.

It is further ordered that appellant file an appeal bond in the sum of two hundred fifty ($250.00) dollars within ten days from this date.

It is further ordered that this appeal be, and the same is hereby consolidated with the appeal allowed by the District Court and docketed in this Court as No. 5800.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 102, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the thirty-first day of March, 1936, upon which the following entitled consolidated cause was heard and determined:

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title & Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation,
Appellee,

Nos. 5765-5800, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 11th day of March, A. D. 1937.

FREDERICK G. CAMPBELL,
(SEAL) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the first day of October, 1935, of the October Term, in the year of our Lord one thousand nine hundred and thirty-five, and of our Independence the one hundred and sixtieth.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under the Trust Deed recorded as Document No. 10325493,

Appellant,

5765-5800 *vs.*

Forty - One Thirty - Six Wilcox Building Corporation.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And to-wit: On the thirteenth day of February, 1936, there was filed in the office of the Clerk of this court a Petition for Leave to Appeal, and Brief in Support in cause No. 5765, which said Petition for Leave to Appeal and Brief are not copied here.

And afterwards, to-wit: On the twenty-seventh day of April, 1936, there was filed in the office of the Clerk of this court, an Appellants Brief in Consolidated Causes Nos. 5765-5800, which said Brief for Appellant is not copied here.

And afterwards, to-wit: On the eighth day of June, 1936, there was filed in the office of the Clerk of this court, an Appellees Brief in Consolidated Causes Nos. 5765-5800, which said Appellees Brief is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the sixth day of October, 1936, of the October Term, in the year of our Lord one thousand nine hundred and thirty-six, and of our Independence the one hundred and sixty-first.

And afterwards, to-wit: On the twenty-first day of October, 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 21, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee, *et al.*,
5765-5800 *vs.*
Forty-One Thirty-Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. George W. Ott, counsel for appellant, and by Mr. Joseph Karlin and Mr. Joseph Z. Willmer, counsel for appellee, and the court having heard the same, takes this matter under advisement.

And afterwards, to-wit: On the thirtieth day of November, 1936, there was filed in the office of the Clerk of this court, the Opinion of the court, which said Opinion is in words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765, 5800. October Term and Session, 1936.

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

Debtor.

Chicago Title and Trust Company, a Corporation, as Successor Trustee under the Trust Deed recorded as Document No. 10325493,

Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation, a corporation,

Appellee.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

November 30, 1936.

Before SPARKS, *Circuit Judge*, and LINDLEY and BRIGGLE, *District Judges.*

LINDLEY, *District Judge.* Appellee, a building corporation, on June 13, 1935, filed its petition for corporate reorganization under Sections 77A and 77B of the Bankruptcy Act, as amended, and its petition praying that the receiver in a foreclosure proceedings in the state court be directed

to deliver possession of all property in the receiver's possession to the United States District Court. Appellant, as successor trustee and plaintiff in the foreclosure proceedings, was permitted by the District Court to file its answer to the petition, which, with the answer, was referred to a Master, who found and concluded that appellee was a corporation within that word as used in the bankruptcy act; that its property had been sold by decree of the Circuit Court of Cook County on July 19, 1931 but that the certificate of sale had been purchased and is now the property of appellee; that appellant is not a creditor within the class permitted by the Bankruptcy Act to question good faith; that appellee's petition for reorganization was properly filed in good faith; that the court's jurisdiction being paramount, the proceedings in the state court should be stayed until the further order of the court. Appellant's exceptions were overruled. The court approved the petition as being properly filed in good faith, appointed a temporary trustee, directed all parties to deliver possession of the property to the trustee and restrained appellant from further prosecuting is foreclosure proceedings, pending reorganization. From this order this appeal was taken.

Appellee was organized under the laws of the state of Illinois on April 10, 1929, to acquire and operate the premises, which were thereupon conveyed to the corporation by the then owner, one Gurevitz, subject to the mortgage of $95,000, made to the Madison & Kedzie State Bank as trustee, (which, present appellant has succeeded as successor trustee). On December 26, 1929 appellee executed a second mortgage, securing $15,000, to appellant as trustee. On May 4, 1931, upon a proceedings instituted by the state prior thereto, the Circuit Court of Cook County entered a decree, forfeiting the charter of appellee for failure to file annual reports and to pay license fees and franchise taxes, and decreed its dissolution, but took no steps to distribute its property.

On July 10, 1931, a decree was entered by the Circuit Court of Cook County against appellee, foreclosing two mechanic liens, and the premises were sold, in satisfaction of the decree, to the lienholders, the certificate of sale having been issued to them August 5, 1931. Thereafter on May 7, 1935, the then holders of the certificates assigned the same to one Willens, who, on May 4, 1935, assigned them to appellee.

On October 24, 1931, the trustee under the first mortgage

filed foreclosure proceedings in the Superior Court of Cook County. A receiver was appointed. On November 10, 1931, suit was brought to foreclose the lien of the junior mortgage, and the receivership created under the first mortgage foreclosure was extended to include the second. Appellee was party to each of these suits.

Appellant contends that, by virtue of the forfeiture of its charter as aforesaid, appellee lost its legal existence and was thereafter without right to institute action seeking reorganization under the Bankruptcy Act. Sections 14-79 Chapter 32 of the 1929 Corporation Act of the State of Illinois, provide for forfeiture of a corporate charter for failure to make annual reports. The Act provides two years of grace for liquidation of the affairs of the corporation, in actions instituted either by itself of by its creditors. This two year period had expired when the petition for reorganization was filed. Appellant admits paramount jurisdiction in the court of bankruptcy in liquidation or reorganization of insolvent estates, in any manner provided by the federal bankruptcy act, but argues that after the two year period of grace, provided by the Illinois Statute, a corporation has no legal existence and, being without life, cannot thereafter invoke federal jurisdiction, and that to permit such action to be maintained would be unconstitutional as failing to give full faith and credit to the decree of forfeiture. It admits that, within that period, creditors may invoke the federal jurisdiction, thus superseding all other proceedings in state or federal courts having to do with the liquidation of debtor's assets, but insists that after the two year period has expired, a corporation may not inaugurate such proceedings by a voluntary petition.

In the case of *In re 211 East Delaware Place Building Corporation*, 76 Fed. (2d) 834, this Court had to do with a situation where the receiver in the state court, under pending foreclosure proceedings, objected to the jurisdiction of the federal court to approve a petition under 77B, by a building corporation which had been dissolved by decree of the state court because of noncompliance with the state corporation laws, entered more than two months prior to the filing of the bankruptcy proceedings. We then said:

> "It by no means follows that the bondholders could not treat the corporation as an entity subject to adjudication under the Bankruptcy Act or under sections 77A and 77B of said act. That a corporation, thus dissolved,

> exists for certain purposes, Smith-Hurd Rev. St. Ill. 1931, c. 32, sec. 14, 79, Cahill's Rev. St. Ill. 1931, c. 32, pars. 14, 79, one of which is to have its estate administered in a court of bankruptcy is the holding of the courts that have passed on this question."

Proceeding, the Court remarked that there was no reason why the rule which applies under the general bankruptcy act, should not apply under sections 77A and 77B, saying:

> "It seems, there are stronger reasons for extending to such unfortunate bondholders all the protection which may fairly and legitimately be extended to creditors under sections 77A and 77B."

True it is that in that case the proceedings had been instituted by three creditors. But, as appears in *In re 211 East Delaware Place Building Corporation,* 14 F. Supp. 96, where Judge Evans sat in the District Court, "the debtor, together with all of the stockholders joining, filed an answer admitting the allegations of the complaint and setting forth facts which disclosed acts of bankruptcy other than the one set forth in the petition. It admitted insolvency and inability to pay its debts—facts, with proof of which the record is most replete". It was there held that in view of this fact the proceedings were, to all intent and purposes, voluntary in character. Consequently it is the settled law of this court that the corporation, thus dissolved, exists for the purpose of having "its estate administered in a court of bankruptcy" in a proceedings "to all intents and purposes, voluntary in character."

The Circuit Court of Appeals for the Second Circuit, in the case of *In re Munger Vehicle Tire Co.,* 159 Fed. 901, held that a corporation, previously declared dissolved under the state law, had the legal right and power to appear by attorney in a bankruptcy action instituted by creditors. The basis for this decision and that of other courts to similar purport, is that Congress did not intend to leave the affairs of dissolved, unliquidated corporations to the state courts, but intended to include them within the meaning of the word corporations as used in the act.

Here the debtor was still a defendant in the state court proceedings. Those proceedings had to do with the liquidation of the only assets,—the building and the real estate on which it is located. There was nothing else to which creditors might have recourse, and any final liquidation of those assets, consequently, would effect a final disposition of all the

rights of all creditors, who would, thereafter, have no recourse upon their claims. Thus, in effect and for all practical purposes, the proceedings to which the debtor was a party, had to do with the liquidation of the assets of an insolvent corporation,—one which was unable to pay its debts as they matured.

Remembering that under the constitution, the national government, through its judiciary, pursuant to acts of Congress, has exclusive and paramount jurisdiction of the estates of insolvent persons, it follows that nothing done by a state court may curtail, limit, impede or defeat that jurisdiction. Jurisdiction in bankruptcy under the federal constitution comes into existence, we take it, simultaneously with the coming into existence of insolvency of the debtor. Over his acts, in marshalling and liquidating his assets, in disposing of his property, the bankruptcy power promptly extends its arms. Consequently, though a corporation may be a creature of a state, that state having created it and given it the right to exist and to make debts, charged with knowledge of this bankruptcy power, may not so frame its laws as to bring about a situation where the jurisdiction of the federal courts to administer an insolvent estate is defeated. Having given the corporation existence, it may not take away this life to defeat the working of the bankruptcy law. Until its estate has been administered, liquidated, composed or reorganized in compliance with the bankruptcy act, the jurisdiction of the bankruptcy court continues.

And to say that only creditors may invoke that jurisdiction, it seems to us, would cramp unnecessarily and unreasonably the jurisdiction of the federal courts over insolvent estate. We can conceive of no good reason why a debtor corporation, struggling with foreclosure of three classes of secured claims, still in existence for the purpose of liquidation of its assets in those proceedings, may not institute proceedings under the bankruptcy act, and, incidentally, perform such acts as are necessary to preserve its property rights for itself and its creditors, until that court's administration can be made effective. For this reason we believe that the debtor had a right to select its forum for the liquidation of its assets and to buy the certificates of sale under the first foreclosure in order to preserve its property rights for its creditors and to enable effective bankruptcy administration to be had.

Nor do we consider this, in any wise, an unconstitutional

exercise of the bankruptcy power. To be sure, the decree of the state court forfeiting the charter of the debtor was of final unimpeachable decree, subject, however, to a limitation, that is, the paramount authority under the federal constitution to liquidate the debts of the corporations so long as such debts and the assets exist. In other words, as we have pointed out, state court authority to annul an insolvent corporation's existence, is subject to the paramount authority on the part of the bankruptcy court to take such steps regarding the debtor and its affairs as will effectuate the bankruptcy power. Consequently, the District Court had the power to entertain the petition of the debtor and to restrain pending suits interfering with its administration and the accomplishment of the purposes of its jurisdiction.

Appellant complains of the finding that the petition was filed in good faith. The court overruled the exceptions to the findings and approved the master's report, and we can not see, upon examination of the record, that the facts did not exist justifying the action of the court.

Judge BRIGGLE dissents.

The orders are

AFFIRMED.

Endorsed: Filed November 30, 1936. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirtieth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Monday, November 30, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,

5765 *vs.*

Forty - One Thirty - Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the Order or Decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

And on the same day, to-wit: On the thirtieth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Monday, November 30, 1936.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
5800 *vs.*
Forty - One Thirty - Six Wilcox Building Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the Order or Decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the nineteenth day of December, 1936, there was filed in the office of the Clerk of this court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

And afterwards, to-wit: On the seventh day of January, 1937, the following further proceedings were had and entered of record, to-wit:

Thursday, January 7, 1937.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title and Trust Company, as Successor Trustee, etc.,
5765-5800 *vs.*
Forty - One Thirty - Six Wilcox Building Corporation.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that the Petition for a Rehearing is this cause be, and the same is hereby denied.

And afterwards, to-wit: On the twenty-fifth day of February, 1937, there was filed in the office of the Clerk of this court, a Notice and Praecipe for Supreme Court Record, which said Notice and Praecipe are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765-5800. October Term and Session, 1936.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as Document No. 10325493, *Appellant,*

vs.

Forty - One Thirty - Six Wilcox Building Corporation, a corporation, *Appellee.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

NOTICE.

To: Joseph Z. Willner, 751, 10 S. LaSalle St.,
Joseph J. Karlin, 833, 11 S. LaSalle St.

Please Take Notice that we have this day filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, a praecipe for record, a copy of which is herewith served upon you.

RICHARD H. HOLLEN,
GEORGE W. OTT,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee, etc.

Dated at Chicago, Illinois, February 24, 1937.

Received a copy of the above notice and praecipe therein referred to this 24th day of February, 1937.

KARLIN & COHEN,
JOSEPH Z. WILLNER,
Attorneys for Forty-One Thirty-Six Wilcox Building Corporation, a corp.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 5765-5800. October Term and Session, 1936.

In the matter of Forty-One Thirty-Six Wilcox Building Corporation, a corporation, Debtor.

Chicago Title and Trust Company, a corporation, as successor trustee under the trust deed recorded as Document No. 10325493, *Appellant,*

vs.

Forty-One Thirty-Six Wilcox Building Corporation, a corporation, *Appellee.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PRAECIPE FOR RECORD.

The Clerk of the United States Circuit Court of Appeals for the Seventh Circuit will please prepare and print the record to be filed with the Supreme Court of the United States with the petition for certiorari to review the order and judgment of said Circuit Court of Appeals entered November 30, 1936, in causes Nos. 5765 and 5800 on consolidated appeals from certain decrees or orders of the District Court of the United States for the Northern District of Illinois, Eastern Division.

The record to be prepared and printed shall include the following:

(1) The printed record now on file in the Circuit Court of Appeals.

(2) A recital of the filing of the petition of appellant for the allowance of an appeal and brief in support thereof.

(3) A recital of the filing of all briefs by appellant and appellee.

(4) Minute entry showing argument of cause.

(5) Opinion of the court.

(6) The order or judgment of the court.

(7) A recital of the filing of the petition of the appellant for rehearing.

(8) The order denying the petition of the appellant for rehearing.

(9) This praecipe for the record with proof of service thereof.

(10) Certificate of the clerk of the circuit court of appeals to the record.

Respectfully,

RICHARD H. HOLLEN,
GEORGE W. OTT,
Attorneys for Chicago Title and Trust Company, a corporation, as successor trustee, etc.

Dated at Chicago, Illinois, February 24, 1937.

Endorsed: Filed February 25, 1937. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 105 to 118, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe filed on February 25, 1937 (excepting Item 1, of said praecipe, being the Printed Record, which is certified under a separate certificate)

In the Matter of Forty-One Thirty-Six Wilcox Building Corporation, Debtor.

Chicago Title & Trust Company, as Successor Trustee under Trust Deed Recorded as Document No. 10325493,
Appellant,

vs.

Forty-One Thirty-Six Wilcox Building Corporation,
Appellee,

Nos. 5765-5800, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 11th day of March, A. D. 1937.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937
No. 23

ORDER ALLOWING CERTIORARI—Filed May 17, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937
No. 24

ORDER ALLOWING CERTIORARI—Filed May 17, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.